

**NURULLAJE SAYRE Y MALAMPAD @ “INOL”;
PETITIONER, VS. HON. DAX GONZAGA XENOS, IN HIS CAPACITY AS
THE PRESIDING JUDGE OF REGIONAL TRIAL COURT OF PANABO
CITY, DAVAO DEL NORTE, BRAN...**

G.R. Nos. 244413 & 244415-16. February 18, 2020

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a Petition for Certiorari and Prohibition[1] under Rule 65 of the Rules of Court, assailing the Order[2] dated December 6, 2018 of public respondent Hon. Dax Gonzaga Xenos (Presiding Judge Xenos), Presiding Judge of the Regional Trial Court (RTC) of Panabo City, Davao del Norte, Branch 34, in Crim. Case Nos. CRC 416-2017, 417-2017, and 418-2017, the dispositive portion of which reads:

WHEREFORE, the Motion to Plea Bargain is DENIED. Set the pretrial to 31 January 2018 [sic] at 1:00 p.m.

SO ORDERED.[3] (*Italics and underscoring in the original.*)

In an Order[4] dated January 23, 2019, the RTC denied the Motion for Reconsideration[5] of Nurullaje Sayre y Malampad @ "Inol" (Sayre).

The Antecedents

Sayre was charged with violation of Sections 5, 11, and 12, Article II of Republic Act No. (R.A.) 9165,[6] in three separate Information,[7] which respectively read as follows:

CRIMINAL CASE NO. CRC 416-2017

That on or about 09 June 2017, within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully and willingly traded, delivered and sold zero point one zero two nine (0.1029) grams of Methylamphetamine Hydrochloride (Shabu) which is a dangerous drug, contained in a sachet marked as JSC-BB to PO2 Jefferjun Cabantuan who acted as poseur buyer in a legitimate buy-bust operation, and received from said poseur buyer marked money consisting of one thousand peso (P1,000.00) bill bearing serial number X114893 with the initials JSC on the forehead of Vicente Lim.

CONTRARY TO LAW.[8]

CRIMINAL CASE NO. CRC 417-2017

That on or about 09 June 2017 within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully, willingly[,] knowingly had in his possession, control and custody of Methylamphetamine Hydrochloride (Shabu), a dangerous drug, contained in four (4) separate heat sealed transparent [sic] cellophane with their respective markings:

Marking

Weight

JSC-P1

0.0870

zero point zero eight seven zero

JSC-P2

0.6543

zero point six five four three

JSC-P3

0.0545

zero point zero five four five

JSC-P4

0.0531

zero point zero [five] three one

CONTRARY TO LAW.[9]

CRIMINAL CASE NO. CRC 418-2017

That on or about 09 June 2017, within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully, willingly[,] knowingly had in his possession, control and custody, one (1) tooter, an equipment, instrument, apparatus and paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing dangerous drugs into the body.

CONTRARY TO LAW.[10]

On November 9, 2017, Sayre filed a Proposal for Plea Bargaining[11] and manifested as follows:

Today, he wanted to plea bargain Section 5 and 11 to a lesser offense under Section 12, which carries with [it] a penalty of imprisonment of six (6) months and 1 day to four (4) years. Moreover, for Section 12, penalty of compulsory 6-month rehabilitation. These proposals are without prejudice however to the guidelines on plea bargaining yet to be released by the Supreme Court, whichever is most favorable and beneficial to the accused; x x x[12]

Pursuant to Office of the Court Administrator (OCA) Circular No. 90-2018, adopting the Court En Banc Resolution dated April 10, 2018 in Administrative Matter (A.M.) No. 18-03-16-SC (Adoption of the Plea Bargaining Framework in Drug Cases), Sayre filed a Motion for Approval of Plea-Bargaining Proposal with Modification.[13] Sayre proposed the following:

x x x x

4. That in the said Plea-Bargaining Framework for Drug Cases, the offense under Section 5 with quantity of shabu from 0.1 to 0.99 grams the same can be plea bargain under Section 12 of RA 9165 from Life Imprisonment to 6 months and 1 day to 4 years;

5. That also, the offense under Section 11 par. 3 with quantity of shabu from .01 gram to 4.99 grams the same can be plea bargain under Section 12 of RA 9165 from 12 years and 1 day to 20 years to 6 months and 1 day to 4 years;
6. That finally, the offense under Section 12 can now be plea bargain under Section 15 from 6 months and 1 day to 4 years to: (1) 6 months treatment and rehabilitation (if accused admits drug use, or denies drug use but found positive after drug dependency test); or (b) Undergo counselling program at rehabilitation center (if accused is found negative for drug use/dependency);
7. That on September 18, 2018, Dra. Rachel Jan Inojada submitted her Drug Dependency Test (DDT) on accused Sayre and found him negative on shabu;
8. That in view thereof, accused Sayre is praying for the approval of his Plea-Bargaining Proposal for the offense under Sections 5 and 11 of RA 9165 to Section 12 with a penalty of 6 months and 1 day to 4 years; and
9. That however, for the offense under Section 12, the plea bargaining under Section 15 be approved with a modified penalty of "Undergoing counselling at the rehabilitation center" for being negative on drug use.[14] (Italics and underscoring in the original; citations omitted)

Sayre proposed that he be allowed to file an Application for Probation for the penalty of 6 months and 1 day to 4 years considering that the maximum penalty therein is less than 6 years and that he be released from the custody of the Bureau of Jail Management and Penology City Jail upon its approval.[15] The proposal of Sayre is summarized as follows:

Criminal Case No.

OFFENSE CHARGED

PLEA BARGAIN PROPOSED BY SAYRE PURSUANT TO ADMINISTRATIVE MATTER NO. 18-03-16-SC

SECTION

PENALTY

SECTION

PENALTY

CRC

416-2017

Sec. 5

Illegal Sale of Dangerous Drugs (0.1029 gram of shabu)

Life Imprisonment [to death] and a fine ranging from P500,000.00 to P10,000,000.00 (0.01-0.99 gram of shabu)

Sec. 12

Possession of Paraphernalia for dangerous drugs

Imprisonment of 6 months and 1 day to 4 years

CRC

417-2017

Sec. 11

Illegal Possession of Dangerous Drugs (0.0870 gram, 0.6543 gram, 0.0545 gram, and 0.0531 gram of shabu)

12 years and 1 day to 20 years and a fine ranging from P300,000.00-P400,000.00 (0.01-4.99 gram of shabu)

Sec. 12

Possession of Paraphernalia for Dangerous Drugs

Imprisonment of 6 months and 1 day to 4 years

CRC

418-2017

Sec. 12

Possession of Paraphernalia for Dangerous Drugs

6 months and 1 day to 4 years and a fine ranging from P10,000.00 to P50,000.00

Sec. 15

Use of Dangerous Drugs

Penalty of Compulsory 6-month Rehabilitation

City Prosecutor Jennifer B. Namoc-Yasol (City Prosecutor Namoc--Yasol) filed a Comment and Counter-Proposal[16] in accordance with Department of Justice (DOJ) Circular No. 27 dated June 26, 2018, otherwise known as the "Amended Guidelines on Plea Bargaining for Republic Act No. 9165,"[17] summarized as follows:

Criminal Case No.

OFFENSE CHARGED

COUNTER-PROPOSAL BY THE PROSECUTION PURSUANT TO DOJ CIRCULAR NO. 27

SECTION

PENALTY

SECTION

PENALTY

CRC

416-2017

Sec. 5

Illegal Sale of Dangerous Drugs (0.1029 gram of shabu)

Life Imprisonment and a fine ranging from P500,000.00 to P10,000,000.00 (0.01-0.99 gram of shabu)

Section 11 paragraph 3

Illegal Possession of Dangerous Drugs

Indeterminate Penalty of 12 years and 1 day to 14 years and 8 months and a fine of P300,000[18]

CRC

417-2017

Sec. 11

Illegal Possession of Dangerous Drugs (0.0870 gram, 0.6543 gram, 0.0545 gram, and 0.0531 gram of shabu)

12 years and 1 day to 20 years and a fine ranging from P300,000.00-P400,000.00 (0.01-4.99 gram of shabu)

Sec. 12

Possession of Paraphernalia for Dangerous Drugs

Imprisonment Penalty of 6 months and 1 day to 4 years and a fine of P25,000.00[19]

CRC

418-2017

Sec. 12

Possession of Paraphernalia for Dangerous Drugs

6 months and 1 day to 4 years and a fine ranging from P10,000.00 to P50,000.00

Plead to the crime as charged

Indeterminate Penalty of 6 months and 1 day to 4 years and a fine of P25,000.00[20]

City Prosecutor Namoc-Yasol recommended that for the charge under Section 5 (Illegal Sale of Dangerous Drugs), the plea bargain prescribed in DOJ Circular No. 27 is the offense under Section 11, paragraph 3 (Illegal Possession of Dangerous Drugs) with an indeterminate penalty of twelve (12) years to fourteen (14) years and eight (8) months and a fine of P300,00.00. For the charge under Section 11 (Illegal Possession of Dangerous Drugs), the City Prosecutor recommended the plea of guilty to the offense under Section 12 (Illegal Possession of Drug Paraphernalia with an indeterminate penalty of six (6) months and one (1) day to four (4) years and a fine of P25,000.00, as prescribed in DOJ Circular No. 27. As to the charge under Section 12 (Illegal Possession of Drug Paraphernalia), the City Prosecutor recommended that Sayre plead guilty to the crime as charged with an indeterminate penalty ranging from six (6) months and one (1) day to four (4) years and a fine of P25,000.00.[21]

The relevant offenses and their corresponding acceptable plea bargain for each offense, pursuant to A.M. No. 18-03-16-SC, are reproduced below:

Offense Charged

Acceptable Plea Bargain

Remarks

Section

Penalty

Quantity

Section

Penalty

Section 5.

Sale, Trading, etc. of Dangerous Drugs (Methamphetamine hydrochloride or shabu)

Life Imprisonment to Death and fine ranging from P500,000.00 to P10,000,000.00

.01 gram to .99 grams (metamphetamine hydrochloride or shabu only)

Section 12.

Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs

6 month sand 1 day to 4 years and a fine ranging from P10,000 to P50,000

N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.

In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependency test shall be required. If accused admits drug use, or denies it but is found positive after drug dependency test he/she shall undergo treatment and rehabilitation for a period of not less than 6 months. Said period shall be credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/dependency, he/she will be released on time served, otherwise, he/she will serve his sentence in jail minus the counseling period at rehabilitation center. However, if accused applies for probation in offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Sec. 24 thereof, then the law on probation shall apply.

1.00 gram and above (methamphetamine hydro-chloride or shabu only)

No plea bargaining allowed.

Section 11, par. 3.

Possession of Dangerous Drugs (Where quantity of shabu, opium, morphine, heroin, cocaine is less than 5 grams)

12 years & 1 day to 20 years and fine ranging from P300,000 to P400,000

.01 gram to 4.99 grams

Section 12.

Possession of Equipment, Instrument, Apparatus and Other Parapher- naliafor Dangerous Drugs

6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000

N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.

In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependency test shall be required. If accused admits drug use, or denies it but is found positive after drug dependency test, he/she shall undergo treatment and rehabilitation for a period of not less than 6 months. Said period shall be credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/dependency, he/she will be released on time served, otherwise, he/she will serve his sentence in jail minus the counseling period at rehabilitation center. However, if accused applies for probation in offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Sec. 24 thereof, then the law on probation shall apply.

Section 11, par. 2.

Possession of Dangerous Drugs (Where quantity of shabu, opium, morphine, heroin, cocaine is 5 grams or more but not exceeding 10 grams)

20 years to life imprisonment and fine ranging from P400,000 to P500,000

5 grams to 9.99 grams

Section 11, par. 3.

Possession of Dangerous Drugs

12 years and 1 day to 20 years and a fine ranging from P300,000 to P400,000

N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law.

10 grams and above

No plea bargaining allowed

Meanwhile, the pertinent offenses of the guidelines for plea bargaining in cases involving R.A. 9165 set by the DOJ Circular No. 27 are reproduced below:

Offense Charged in Information

Acceptable Plea Bargain

Section

Penalty

Section

Penalty

Section 5

Sale, Trading, etc. of Dangerous Drugs (No volume required)

Life Imprisonment to Death & Fine from Php 500k to Php 10M

Section 11, par. 3

Possession of Dangerous Drugs

(Plea bargaining is allowed only if the drugs involved are "shabu" and/or marijuana and the quantity of "shabu" is less than 5 grams and the quantity of the marijuana is less than 300 grams)

12 yrs & 1 day to 20 yrs and Fine from Php 300k to Php 400k

Section 11, par. 1

Possession of Dangerous Drugs (Where quantity of shabu is 10 grams or more but less than 50 grams)

Life Imprisonment & Fine from Php 400k to Php 500k

No Plea Bargain Allowed

Section 11, par. 2

Possession of Dangerous Drugs (Where quantity of shabu, opium, morphine, heroin, cocaine, et al is 5 grams or more but less than 10 grams; 300 grams or more but less than 500 grams of marijuana)

20 yrs and 1 day to Life Imprisonment & Fine from Php 400k to Php 500k

No Plea Bargain Allowed

Section 11, par. 3

Possession of Dangerous Drugs (Where quantity of "shabu", opium, morphine, heroin, cocaine, et al is less than 5 grams; marijuana is less than 300 grams)

12 yrs & 1 day to 20 yrs and Fine from Php 300k to Php 400k

Section 12 Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs

6 months & 1 day to 4 years and a Fine Ranging from Php 10k to Php 50k

Section 12

Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs

6 months & 1 day to 4 years and a Fine Ranging from Php 10k to Php 50k

Section 15

Use of Dangerous Drugs

(An alternative is to allow the accused to change his plea to "guilty" and avail of the mitigating circumstance of voluntary plea of guilty)

6 months Rehab (1st offense)

6 months & 1 day to 4 years and a Fine Ranging from Php 50k to Php 200k (for 2nd offense)

Since the parties failed to reach a consensus insofar as Criminal Case No. CRC 416-2017 for violation of Section 5 of R.A. 9165 (Illegal Sale of Dangerous Drugs), the RTC deferred the pre-trial to afford Sayre another opportunity to convince the prosecution to accept his proposal.[22]

Sayre reiterated his proposal to plea bargain the charge of Illegal Sale of Dangerous Drugs to the lower offense of Possession of Paraphernalia for Dangerous Drugs under Section 12 in accordance with the guidelines provided by the Court in OCA Circular No. 90-2018.[23] On the other hand, the City Prosecutor argued that they are bound by DOJ Circular No. 27, rejecting Sayre's plea bargain from Illegal Sale of dangerous Drugs to Possession of Drug Paraphernalia, and insisting that "any plea bargaining outside the DOJ circular is not acceptable." [24]

Ruling of the Regional Trial Court

While the prosecution agreed to the plea bargain in Criminal Case Nos. CRC 417-2017 (Illegal Possession of Dangerous Drugs) and CRC 418-2017 (Illegal Possession of Drug Paraphernalia), to one count each for possession of drug paraphernalia under Section 12 of R.A. 9165, there was no agreement in Criminal Case No. 416-2016 (Illegal Sale of Dangerous Drugs).[25] In an Order[26] dated December 6, 2018, the RTC denied Sayre's Motion to Plea Bargain and set the case for Pre-Trial.

Sayre filed an Urgent Motion for Reconsideration[27] arguing that the RTC should abide by and follow OCA Circular No. 90-2018 dated May 4, 2018.[28] His Motion for Reconsideration was denied in the Order[29] dated January 23, 2019.

In the present petition, Sayre seeks to declare DOJ Circular No. 27 unconstitutional for being in contravention with the provisions of OCA Circular No. 90-2018.[30] Citing the case of *Estipona v. Judge Lobrigo*,[31] Sayre argues that OCA Circular No. 90-2018 is a rule of procedure adopted by the Supreme Court under its constitutional mandate to promulgate rules concerning pleading, practice, and procedure in all courts. Therefore, OCA Circular No. 90-2018 is deemed incorporated in the Rules of Court.[32] Denying his offer to plea bargain the charge against him for illegal sale of shabu with a total weight of 0.1029 gram to illegal possession of drug paraphernalia, Presiding Judge Xenos acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction when he disregarded the provisions of under OCA Circular No. 90-2018.[33] Sayre argues that the provision in DOJ Circular No. 27 pertaining to plea bargaining under Section 5 to Section 11 of R.A. 9165, penalized with imprisonment ranging from twelve (12) years and one (1) day to

twenty (20) years and a fine ranging from P300,000.00 to P400,000.00, is unconstitutional as it repealed, altered, or modified the more favorable plea bargaining provision under OCA Circular No. 90-2018.

In the Comment[34] filed by the Office of the Solicitor General (OSG) and the Secretary of Justice, the OSG moves to dismiss the petition as Sayre violated the doctrine of hierarchy of courts.[35] In justifying the issuance of DOJ Circular No. 27, the OSG argues that: (a) it is an administrative issuance which enjoys the presumption of validity[36]; (b) the DOJ has the authority to issue and implement it[37]; and (c) it did not repeal, alter, or modify OCA Circular No. 90-2018 and they can be harmonized.[38] The OSG posits that while A.M. No. 18-03-16-SC sets the limits to be observed in plea bargaining in drugs cases, "Acceptable Plea Bargain" therein merely refers to the lowest possible "lesser crime" the court may allow an accused to plead guilty to. Consequently, the OSG opines that the trial court may allow a plea of guilty to a more serious offense but which is still lesser than the offense originally charged.[39]

The Issues

The issues to be resolved are:

1. Whether petitioner violated the doctrine of hierarchy of courts by filing his petition directly with the Supreme Court;
2. Whether the provision in DOJ Circular No. 27 pertaining to plea--bargaining under Section 5 to Section 11 of R.A. 9165, penalized with imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from P300,000.00 to P400,000.00, is unconstitutional as it repealed, altered, or modified the more favorable plea bargaining provision under OCA Circular No. 90-2018, a procedural rule promulgated by the Supreme Court En Banc, in violation of the rule-making power of the Court under Section 5(5), Article VIII of the 1987 Constitution; and
3. Whether Presiding Judge Xenos acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction when he disregarded the provisions of OCA Circular No. 90-2018.

The Court's Ruling

The petition is not meritorious.

Serious and compelling reasons justify the direct resort to the Court.

There are serious and compelling reasons to warrant direct resort to the Court. Considering that what is invoked here is the constitutionality of DOJ Circular No. 27 that continues to be implemented in the prosecution of cases involving dangerous drugs, Sayre is justified in seeking the immediate action of the Court. The outcome of the present petition will certainly affect hundreds of on-going plea bargaining in dangerous drugs cases.

Plea bargaining was required during pre-trial conference in all criminal cases cognizable by the Municipal Trial Court, the Municipal Circuit Trial Court, the Metropolitan Trial Court, the RTC, and the Sandiganbayan[40] with the objective of promoting fair and expeditious trial. In *Estipona v. Lobrigo*,[41] the Court, speaking through the ponencia of then Associate Justice Diosdado Peralta, now Chief Justice, explained:

x x x plea bargaining has been defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval." There is give-and-take negotiation common in plea bargaining. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses. Properly administered, plea bargaining is to be encouraged because the chief virtues of the system - speed, economy, and finality - can benefit the accused, the offended party, the prosecution, and the court.[42] (Emphasis supplied; citations omitted.)

Plea bargaining is a vital component of restorative justice. In giving preference to working out a mutually satisfactory resolution of the case sanctioned by the court over lengthy and protracted trial, both the state and the accused benefit. The plea bargaining mechanism affords speedy disposal and cost efficiency which significantly contribute to the restorative justice process. By shortening the time between the original charge and the disposition, it enhances the rehabilitative prospects and redeeming characteristics of the offender when the trial court approves the plea bargain to a lesser offense.

We adopt the view of Justice Marvic Mario Victor F. Leonen in his Separate Opinion in *Estipona v. Lobrigo*[43] that the aim is to rehabilitate, not punish, drug offenders. Citing his ponencia in *People v. Holgado*,[44] he stated:

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[45]

While it is the government's mandate to "pursue an intensive and unrelenting campaign against the trafficking and use of dangerous drugs and other similar substances,"[46] it is equally important to highlight "the policy of the State to provide effective mechanisms or measures to re-integrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence." [47] In consonance with the State policy of restorative and compassionate justice, the confusion created by DOJ Circular No. 27 must immediately be clarified in order to guide the trial courts in addressing offers of the accused to plea bargain in drugs cases and afford offenders an opportunity to rehabilitate and become productive members of society again.

In view of the urgency posed by the issuance of DOJ Circular No. 27, there are sufficient justifications to deviate from the strict application of the doctrine of hierarchy of courts.

The provision in DOJ Circular No. 27 pertaining to plea-bargaining under Section 5 to Section 11 of R.A. 9165, penalized with imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from P300,000.00 to P400,000.00, did not contravene the Plea Bargaining Framework found in A.M. No. 18-03-16-SC.

The rule-making authority of the Court under Section 5(5), Article VIII of the 1987 Constitution states:

Sec 5. The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.[48] (Emphasis supplied.)

In this petition, A.M. No. 18-03-16-SC is a rule of procedure established pursuant to the rule-making power of the Supreme Court that serves as a framework and guide to the trial courts in plea bargaining violations of R.A. 9165.

Nonetheless, a plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court. The acceptance of an 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 trial court.[49]

Section 2, Rule 116 of the Rules of Court expressly states:

Sec 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. (Emphasis supplied.)

The use of the word "may" signifies that the trial court has discretion whether to allow the accused to make a plea of guilty to a lesser offense. Moreover, plea bargaining requires the consent of the accused, offended party, and the prosecutor. It is also essential that the lesser offense is necessarily included in the offense charged.

Taking into consideration the requirements in pleading guilty to a lesser offense, We find it proper to treat the refusal of the prosecution to adopt the acceptable plea bargain for the charge of Illegal Sale of Dangerous Drugs provided in A.M. No. 18-03-16-SC as a continuing objection that should be resolved by the RTC. This harmonizes the constitutional provision' on the rule making power of the Court under the Constitution and the nature of plea bargaining in Dangerous Drugs cases. DOJ Circular No. 27 did not repeal, alter, or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC.

Therefore, the DOJ Circular No. 27 provision pertaining to acceptable plea bargain for Section 5 of R.A. 9165 did not violate the rule-making authority of the Court. DOJ Circular No. 27 merely serves as an internal guideline for prosecutors to observe before they may give their consent to proposed plea bargains.

Presiding Judge Xenos did not act without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction when he disregarded the provisions of OCA Circular No. 90-2018.

There is grave abuse of discretion when an act is: (1) done contrary to the Constitution, the law or jurisprudence; or (2) executed whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias.[50] Manifest disregard of the basic rules and procedures constitutes a grave abuse of discretion.[51] In this case, Presiding Judge Xenos did not act without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction in not approving the plea bargain of Sayre. There was a continuing objection on the part of the prosecution. Because of this continuing objection, the parties failed to arrive at a "mutually satisfactory disposition of the case" that may be submitted for the court's approval. The RTC correctly ordered the continuation of the proceedings because there was no mutual agreement to plea bargain.

WHEREFORE, the Petition for Certiorari and Prohibition is DENIED. The Regional Trial Court of Panabo City, Davao del Norte, Branch 34 is hereby ORDERED to proceed with the criminal cases filed against petitioner Nurullaje Sayre y Malampad @ "Inol."

SO ORDERED.

Peralta, C. J., Perlas-Bernabe, A. Reyes, Jr., Gesmundo, J. Reyes, Jr., Hernando, Inting, Delos Santos, and Gaerlan, JJ., concur.

Leonen, J., See separate opinion (concurring)

Caguioa, J., See Dissenting Opinion.

Lazaro-Javier, J., Please see Concurring Opinion.

Zalameda, J., With Separate Concurring Opinion.
Lopez, J., Please see Concurring Opinion.

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- [1] Rollo, pp. 3-29.
- [2] Penned by Presiding Judge Dax Gonzaga Xenos; id. at 70-71.
- [3] Id. at 71.
- [4] Penned by Presiding Judge Dax Gonzaga Xenos; id. at 77.
- [5] Id. at 72-74.
- [6] Otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."
- [7] Rollo, pp. 32-34.
- [8] Id. at 32.
- [9] Id. at 33.
- [10] Id. at 34.
- [11] Not attached to the rollo.
- [12] Rollo, pp. 9-10.
- [13] Id. at 55-58.
- [14] Id. at 56-57.
- [15] Id. at 57.
- [16] Id. at 60-61.
- [17] Id. at 68
- [18] Id. at 61.
- [19] Id.
- [20] Id.
- [21] Id.
- [22] Penned by Presiding Judge Dax Gonzaga Xenos; id. at 62-63.
- [23] Id. at 64-65.
- [24] Id.
- [25] Id.
- [26] Supra note 2.
- [27] Rollo, pp. 72-74.
- [28] Id. at 73.

[29] Supra note 4.

[30] Rollo, pp. 26-27.

[31] 816 Phil. 789 (2017).

[32] Rollo, pp. 18-20.

[33] Id. at 21.

[34] Id. at 112-152.

[35] Id. at 119-121.

[36] Id. at 125.

[37] Id. at 125-128.

[38] Id. at 128-130.

[39] Id. at 139.

[40] Section 2 of R.A. 8493 states:

Sec. 2. Mandatory Pre-Trial in Criminal Cases. - In all cases cognizable by the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, Regional Trial Court, and the Sandiganbayan, the Justice or judge shall, after arraignment, order a pre-trial conference to consider the following:

- (a) Plea bargaining;
- (b) Stipulation of Facts;
- (c) Marking for identification of evidence of parties;
- (d) Waiver of objections to admissibility of evidence; and
- (e) Such other matters as will promote a fair and expeditious trial.

[41] Supra note 31.

[42] Id. at 813.

[43] Supra note 31.

[44] 741 Phil. 78 (2014).

[45] Id. at 100.

[46] R.A. 9165, Sec. 2.

[47] Id.

[48] CONSTITUTION, Sec. 5.

[49] Daan v. Sandiganbayan, 573 Phil. 368, 377 (2008).

[50] Almario v. Executive Secretary, 714 Phil. 127, 169 (2013).

[51] Cruz v. People, 812 Phil. 166, 174 (2017), citing Crisologo v. JEWMA Agro-Industrial Corporation, 728 Phil. 315 (2014).

SEPARATE CONCURRING OPINION

LEONEN, J.:

With the ponente's indulgence, I offer my views and observations.

On June 14, 2017, Nurullaje Sayre y Malampad alias "Inol" (Sayre) was charged with violating Sections 5, 11, and 12 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Informations against him read:

[Criminal Case No. CRC 416-2017]

That on or about 09 June 2017, within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully and willingly traded, delivered and sold zero point one zero two nine (0.1029) grams (sic) of Methylamphetamine Hydrochloride (Shabu) which is a dangerous drug, contained in a sachet marked as JSC-BB to PO2 Jefferjun Cabantuan who acted as poseur buyer in a legitimate buy-bust operation, and received from said poseur buyer marked money consisting of one thousand peso (P1,000.00) bill bearing serial number X114893 with the initials JSC on the forehead of Vicente Lim.

CONTRARY TO LAW.[1]

[Criminal Case No. CRC 417-2017]

That on or about 09 June 2017 within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully, willingly[, and] knowingly had in his possession, control and custody of Methylamphetamine Hydrochloride (Shabu), a dangerous drug, contained in four (4) separate heat sealed transparent cellophane with their respective markings:

Marking

Weight

JSC-P1

0.0870

zero point zero eight seven zero

JSC-P2

0.6543

zero point six five four three

JSC-P3

0.0545

zero point zero five four five

JSC-P4

0.0531

zero point zero [five] three one

CONTRARY TO LAW.[2]

[Criminal Case No. CRC 418-2017]

That on or about 09 June 2017, within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully, willingly[, and] knowingly had in his possession, control and custody, one (1) tooter, an equipment, instrument, apparatus and paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing dangerous drugs into the body.

CONTRARY TO LAW.[3]

On August 17, 2017, this Court promulgated *Estipona v. Hon. Lobrigo*,[4] which declared unconstitutional the prohibition against plea bargaining in Section 23[5] of Republic Act No. 9165.

On November 9, 2017, Sayre submitted a Proposal for Plea Bargaining for the lesser offense of violation of Section 12 of Republic Act No. 9165, "without prejudice however to the guidelines on plea bargaining yet to be released by the Supreme Court, whichever is most favorable and beneficial to the accused[.]"[6]

On April 10, 2018, this Court issued A.M. No. 18-03-16-SC, or the Adoption of the Plea Bargaining Framework in Drugs Cases, which contained a chart outlining the "Acceptable Plea Bargain" for various drug offenses:

Offense Charged

Acceptable Plea Bargain

Remarks

Section

Penalty

Quantity

Section

Penalty

Section 11, par. 3.

Possession of Dangerous Drugs (Where quantity of shabu, opium, morphine, heroin, cocaine is less than 5 grams)

12 years & 1 day to 20 years and fine ranging from P300,000 to P400,000

.01 gram to 4.99 grams

Section 12.

Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs

6 month sand 1 day to 4 years and a fine ranging from P10,000 to P50,000

N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.

In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependency test shall be required. If accused admits drug use, or denies it but is found positive after drug dependency test he/she shall undergo treatment and rehabilitation for a period of not less than 6 months. Said period shall be

credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/dependency, he/she will be released on time served, otherwise, he/she will serve his sentence in jail minus the counseling period at rehabilitation center. However, if accused applies for probation in offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Sec. 24 thereof, then the law on probation shall apply.

Section 11, par. 3.

Possession of Dangerous Drugs (Where quantity of marijuana is less than 300 grams)

12 years & 1 day to 20 years and fine ranging from fine from P300,000 to P400,000

.01 gram to 299.99 grams

Section 12.

Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs

6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000

N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.

Section 11, par. 2.

Possession of Dangerous Drugs (Where quantity of shabu, opium, morphine, heroin, cocaine is 5 grams or more but not exceeding 10 grams)

20 years to life imprisonment and fine ranging from P400,000 to P500,000

5 grams to 9.99 grams

Section 11, par. 3.

Possession of Dangerous Drugs

12 years and 1 day to 20 years and a fine ranging from P300,000 to P400,000

N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law.

10 grams and above

No plea bargaining allowed

Section 11, par. 2.

Possession of Dangerous Drugs (Where the quantity of marijuana is 300 grams or more but not exceeding 500 grams)

20 years to life imprisonment and fine ranging from P400,000 to P500,000

300 grams to 499 grams

Section 11, par. 3.

Possession of Dangerous Drugs

12 years and 1 day to 20 years and a fine ranging from P300,000 to P400,000

N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law.

500 grams and above

No plea bargaining allowed

Section 12.

Possession of Equipment, Apparatus and Other Paraphernalia for Dangerous Drugs

6 months and 1 day to 4 years and fine ranging from P10,000 to P50,000

Section 15.

Use of Dangerous Drugs

6 months treatment and rehabilitation

If accused admits drug use, or denies drug use but found positive after drug dependency test

Undergo counselling program at rehabilitation center

If accused is found negative for drug use/dependency

Section 14.

Possession of Equipment, Apparatus and Other Paraphernalia for Dangerous Drugs during Parties Social Gatherings or Meetings

Maximum penalty in Section 12

Section 15.

Use of Dangerous Drugs

6 months treatment and rehabilitation

If accused admits drug use, or denies drug use but found positive after drug dependency test

Undergo counselling program at rehabilitation center

If accused is found negative for drug use/dependency

Section 5.

Sale, Trading, etc. of Dangerous Drugs (Methamphetamine hydrochloride or shabu only)

Life Imprisonment to Death and fine ranging from P500,000.00 to P10,000,000

.01 gram to .99 grams (metamphetamine hydrochloride or shabu only)

Section 12.

Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs

6 month sand 1 day to 4 years and a fine ranging from P10,000 to P50,000

N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.

In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependency

test shall be required. If accused admits drug use, or denies it but is found positive after drug dependency test he/she shall undergo treatment and rehabilitation for a period of not less than 6 months. Said period shall be credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/dependency, he/she will be released on time served, otherwise, he/she will serve his sentence in jail minus the counseling period at rehabilitation center. However, if accused applies for probation in offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Sec. 24 thereof, then the law on probation shall apply.

1.00 gram and above (methamphetamine hydrochloride or shabu only)

No plea bargaining allowed

Section 5.

Sale, Trading, etc. of Dangerous Drugs (Marijuana only)

Life Imprisonment to Death and fine ranging from P500,000.00 to P10,000,000

.01 gram to 9.99 grams of marijuana only

Section 12.

Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs

6 month sand 1 day to 4 years and a fine ranging from P10,000 to P50,000

N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.

In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependency test shall be required. If accused admits drug use, or denies it but is found positive after drug dependency test he/she shall undergo treatment and rehabilitation for a period of not less than 6 months. Said period shall be credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/dependency, he/she will be released on time served, otherwise, he/she will serve his sentence in jail minus the counseling period at rehabilitation center. However, if accused applies for probation in offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Sec. 24 thereof, then the law on probation shall apply.

10.00 grams of marijuana only and above

No plea bargain allowed

Following this, the Office of the Court Administrator issued Office of the Court Administrator Circular No. 90-2018, enjoining all judges of second level courts to strictly comply with A.M. No. 18-03-16-SC.

The Department of Justice, for its part, issued on June 26, 2018 Department of Justice Circular No. 27, or the Amended Guidelines on Plea Bargaining for Republic Act No. 9165. This also provided its own outline of the "Acceptable Plea Bargain" per offense:

Offense Charged in Information

Acceptable Plea Bargain

Section

Penalty

Section

Penalty

Section 4

Importation of Dangerous Drugs

Life Imprisonment to Death & Fine from Php 500k to Php 10M

No Plea Bargain Allowed

Section 4, par. 2.

Importation of Controlled Precursors & Essential Chemicals

12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k

No Plea Bargain Allowed

Section 4, par. 3

Maximum Penalty

No Plea Bargain

Importation thru use of diplomatic passport, etc.

Allowed

Section 4, par. 4

Acting as Financier in Importation

Maximum Penalty

No Plea Bargain Allowed

Section 4, par. 5

Acting as "Protector/Coddler"

12 years & 1 day to 20 years & Fine Allowed from Php 100k to Php 500k

No Plea Bargain Allowed

Section 5

Sale, Trading, etc. Of Dangerous Drugs

Life Imprisonment to Death & Fine from Php 500k to Php 10M

Section 11, par. 3

Possession of Dangerous Drugs

(Plea bargaining is allowed only if the drugs involved are "shabu" and/or marijuana and the quantity of "shabu" is less than 5 grams and the quantity of marijuana is less than 300 grams)

12 yrs & 1 day to 20 yrs and Fine from Php 300k to Php 400k

Section 5, par. 2

Safe, Trading, etc. of Controlled Precursor & Essential Chemicals

12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k

No Plea Bargain

Section 5, par. 3

Sale, trading, etc. takes place within 100 meters from a school

Maximum Penalty

No Plea Bargain Allowed

Section 5, par. 4

Drug pushers who use minors as couriers, etc

Maximum Penalty

No Plea Bargain Allowed

Section 5, par. 5

When the victim is a minor causing the latter's death

Maximum Penalty

No Plea Bargain Allowed

Section 5, par. 6

Acting as Financier

Maximum Penalty

No Plea Bargain Allowed

Section 5, par. 7

Acting as "Protector/Coddler"

12 years & 1 day to 20 years & Fine from Php 100k to Php 500k

No Plea Bargain Allowed

Section 6, par. 1

Maintenance of Den, Dive or Resort Where dangerous drugs are used or sold in any form

Life Imprisonment to Death & Fine from Php 500k to Php 10M

No Plea Bargain Allowed

Section 6, par. 2

Maintenance of Den, Dive or Resort Where Controlled Precursors and Essential Chemicals are used or sold

12 years & 1 day to 20 years & Fine from Php 100k to Php 500k

No Plea Bargain

Section 6, par. 3

Where dangerous drug is sold or delivered to a minor and is allowed to use it in such place

Maximum Penalty

No Plea Bargain Allowed

Section 6, par. 4

When the use of dangerous drugs in such place causes the death of a person

Death & Fine from Php 1M to Php 10M imposed on owner, maintainer and/or operator

No Plea Bargain Allowed

Section 6, par. 6

Acting as Organizer, Manager or Financier of such place

Maximum Penalty

No Plea Bargain Allowed

Section 6, par. 7

Acting as "Protector/Coddler"

12 years & 1 day to 20 years & Fine from Php 100k to Php 500k

Section 12

Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs

OR

Section 15 Use of Dangerous Drugs

6 months & 1 day to 4 years and a Fine Ranging from Php 10k to Php 50k

6 months Rehab Use of Dangerous Drugs (1st offense 6 years & 1 day to 12 years and a Fine Ranging from Php 50k to Php 200k (for 2nd offense)

Section 8, par. 1

Manufacture of Dangerous Drugs

Life Imprisonment to Death & Fine from Php 500k to Php 10M

No Plea Bargain Allowed

Section 8, par. 2

Manufacture of Controlled Precursors and Essential Chemicals

12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k

No Plea Bargain

Section 8, par. 4

Acting as Financier

Maximum Penalty

No Plea Bargain Allowed

Section 8, par. 5

Acting as "Protector/Coddler"

12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k

No Plea Bargain

Section 9

Illegal Chemical Diversion of Controlled Precursors and Essential Chemicals

12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k

No Plea Bargain Allowed

Section 10, par. 1

Manufacture or Delivery of Equipment, Instruments, Apparatus and Other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (used to plant propagate, cultivate, grow, harvest, etc any dangerous drug, controlled precursor & essential chemical

12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k

No Plea Bargain

Section 10, par. 2

If paraphernalia manufactured or delivered will be used to introduce a dangerous drug in the human body

6 months & 1 day to 4 years and fine ranging from Php 10k to Php 50k

No Plea Bargain

Section 10, par. 3

If a minor is used to deliver such equipment, instrument, paraphernalia, etc.

Maximum Penalty

No Plea Bargain Allowed

Section 11

Possession of Dangerous Drugs (Where quantity of shabu is 50 grams or more; opium, morphine, heroin, cocaine and marijuana resin is 10 grams or more; marijuana is 500 grams or more)

Life Imprisonment to Death & Fine from Php 500k to Php 10M

No Plea Bargain Allowed

Section 11, par. 1

Possession of Dangerous Drugs (Where quantity of shabu is 10 grams or more but less than 50 grams)

Life Imprisonment & Fine from Php 400k to Php 500k

No Plea Bargain Allowed

Section 11, par. 2

Possession of Dangerous Drugs (Where quantity of shabu, opium, morphine, heroin, cocaine, et al is 5 grams or more but less than 10 grams; 300 grams or more but less than 500 grams of marijuana)

20 yrs and 1 day to Life Imprisonment & Fine from Php 400k to Php 500k

No Plea Bargain Allowed

Section 11, par. 3

Possession of Dangerous Drugs (Where quantity of "shabu", opium, morphine, heroin, cocaine, et al is less than 5 grams; marijuana is less than 300 grams)

12 yrs & 1 day to 20 yrs and Fine from Php 300k to Php 400k

Section 12

Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs

6 months & 1 day to 4 years and a Fine Ranging from Php 10k to Php 50k

Section 12

Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs

6 months & 1 day to 4 years and a Fine Ranging from Php 10k to Php 50k

Section 15

Use of Dangerous Drugs

(An alternative is to allow the accused to change his plea to "guilty" and avail of the mitigating circumstance of voluntary plea of guilt)

6 months Rehab (1[st] offense)

6 months & 1 day to 4 years and a Fine Ranging from Php 50k to Php 200k (for 2[nd] offense)

Section 13

Possession of Dangerous Drugs During Parties, Sodal Gatherings or Meetings

(Plea bargaining is allowed from Section 13 of Republic Act No. 9165 to Section 11, paragraph 3 of the same statute where the quantity of dangerous drugs Involved is less than 5 grams (in cases of "shabu", opium, cocaine, etc.) and less than 300 grams of marijuana. If the quantity of dangerous drugs Involved exceeds the above amounts, plea bargaining is prohibited.)

Maximum Penalties provided under Section 11 regardless of quantity or purity

Section 11, par. 3

Possession of Dangerous Drugs

(Plea bargaining is allowed where the quantity of "shabu", opium, morphine, heroin, cocaine, et al is less than 5 grams and marijuana is less than 300grams. If the quantity of dangerous drugs involved exceeds the above quantities, no plea bargaining is allowed.)

12 yrs & 1 day to 20 yrs and Fine from Php 300k to Php 400k

Section 14

Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs During Parties, Social

Gatherings or Meetings

Maximum Penalty provided under Section 12

Section 15

Use of Dangerous Drugs

6 mos. Rehab for 1[st] offense; 6 yrs & 1 day to 12 yrs & fine from Php 50k to Php 200k for 2[nd] offense

Section 15

Use of Dangerous Drugs

6 mos. Rehab for 1[st] offense; 6 yrs & 1 day to 12 yrs & fine from Php 50k to Php 200k for 2[nd] offense

No Plea Bargain

Section 16, par. 1

Cultivating or Culture of Plants Classified as Dangerous Drugs or are Sources thereof

Life Imprisonment to Death and Fine from Php 500k to Php 10M

No Plea Bargain

Section 16, par. 3

Acting as Financier

Maximum Penalty

No Plea Bargain Allowed

Section 16, par. 4

Acting as "Protector/Coddler"

12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k

No Plea Bargain

Section 17

Maintenance and Keeping of Original Records of Transactions on Dangerous Drugs and/or Controlled Precursors & Essential Chemicals

1 yr. and 1 day to 6 yrs, and Fine from Php 10k to Php 50k

No Plea Bargain

Section 18

Unnecessary Prescription of Dangerous Drugs

12 yrs & 1 day to 20 yrs & Fine from Php 100k to Php 500k with revocation of license of practitioner

No Plea Bargain

Section 19

Unlawful Prescription of Dangerous Drugs

Life Imprisonment to Death & Fine from Php 500k to Php 10M

No Plea Bargain Allowed

Section 26

Attempt or Conspiracy

Penalty Provided in Previous Sections for Importation, Sale, Maintenance of Den, Manufacture & Cultivation of Dangerous Drugs

No Plea Bargain Allowed

Section 27

Criminal Liability of Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for Confiscated Dangerous Drugs, etc.

Life Imprisonment to Death & Fine from Php 500k to Php 10M

No Plea Bargain Allowed

Section 29

Planting of Evidence

Death

No Plea Bargain Allowed

Section 32

Liability of Person Violating any Regulation Issued by the Dangerous Drugs Board

6 mos. & 1 day to 4 yrs and fine, from Php 10k to Php 50k

No Plea Bargain

Section 37

Issuance of False or Fraudulent Drug Test Results

6 yrs and 1 day to 12 yrs & fine from Php 100k to Php 500k

No Plea Bargain

Section 72

Liability of Person who violates the Confidentiality of Records (of drug dependent under voluntary submission program)

6 mos. & 1 day to 6 yrs and fine, from Php 1k to Php 6k

No Plea Bargain

Section 91, par. 1

Responsibility & Liability of Law Enforcement Agencies and other Government Officials and Employees in Testifying as Prosecution Witnesses in Dangerous Drugs Cases

12 yrs and 1 day to 20 yrs and fine of not less than Php 500k

Section 91, par. 2

Liability of Immediate Superior if he failed to exert reasonable effort to present witness to court

2 mos and 1 day but not more than 6 yrs and fine of not less than Php 10k but not more than Php 50k

Section 91, par. 2

Liability of Immediate Superior if he failed to exert reasonable effort to present witness to court

2 mos and 1 day but not more than 6 yrs and fine of not less than Php 10k but not more than Php 50k

No Plea Bargain

Section 91, par. 3

Failure of Immediate Superior to Inform Court of Transfer or Re-Assignment of Accused Law Enforcement Agent

2 mos and 1 day but not more than 6 yrs and fine of not less than Php 10k but not more than Php 50k

No Plea Bargain

Section 92

Delay and Bungling in the Prosecution of Drug Cases

12 yrs and 1 day to 20 yrs without prejudice to further prosecution under the RPC

No Plea Bargain Allowed

Thus, Sayre filed a Motion for Approval of Plea-Bargaining Proposal with Modification,[7] citing A.M. No. 18-03-16-SC. To this, the prosecution filed a Comment and Counter-Proposal,[8] citing Department of Justice Circular No. 27.

The proposal and counter-proposal are summarized as follows:

CRIMINAL CASE NO.

OFFENSE CHARGED

(Republic Act No. 9165)

ACCUSED'S PROPOSAL

PROSECUTION'S COUNTER--PROPOSAL

SECTION

PENALTY

SECTION

PENALTY

SECTION

PENALTY

CRC 416-2017

(0.1029 gram of shabu)

Sec. 5

Illegal Sale of Dangerous Drugs

Life Imprisonment and a fine ranging from P500,000.00 to P10,000,000.00

Section 12.

Possession of Paraphernalia for dangerous drugs

Imprisonment of 6 months and 1 day to 4 years

Sec. 11.

Illegal Possession of Dangerous Drugs

Indeterminate Penalty of 12 years and 1 day to 14 years and 8 months and a fine of P300,000.00

CRC 417-2017

(0.0870 gram, 0.06543 gram, .0545 gram, and 0.0531 gram of shabu)

Sec.11.

Illegal Possession of Dangerous Drugs

12 years and 1 day to 20 years and a fine ranging from P300,000.00 to P400,000.00

Section 12.

Possession of Paraphernalia for dangerous drugs

Imprisonment of 6 months and 1 day to 4 years

Section 12.

Possession of Paraphernalia for dangerous drugs

Indeterminate Penalty of 6 months and 1 day to 4 years and a fine of P25,000.00

CRC 418-2017

Section 12.

Possession of Paraphernalia for dangerous drugs

Imprisonment of 6 months and 1 day to 4 years and a fine ranging from P10,000.00 to P50,000.00

Sec. 15

Use of Dangerous Drugs

Compulsory 6-month rehabilitation

Plead to the crime as charged

Indeterminate Penalty of 6 months and 1 day to 4 years and a fine of P25,000.00

On October 11, 2018, the Regional Trial Court of Panabo City, Branch 34, issued an Order[9] stating that the prosecution and Sayre agreed to an indeterminate penalty of six (6) months and one (1) day to four (4) years for Criminal Case Nos. CRC 417-2017 and CRC 418-2017. However, since the parties could not agree on the plea bargain for Criminal Case No. CRC 416-2017, the trial court reset the pre-trial.[10]

On November 5, 2018, Sayre filed an Extremely Urgent Motion.[11] He prayed that, in view of A.M. No. 18-03-16-SC and OCA Circular No. 90-2018, he be allowed to plead to the lower offense of violating Section 12, for the possession of drug paraphernalia, in Criminal Case No. CRC 416-2017, in which he was charged with illegal sale.[12]

In its Comment (With Opposition),^[13] the prosecution agreed with Sayre's proposal to lower the offenses in Criminal Case Nos. CRC 417-2017 and CRC 418-2017 to violation of Sections 12 and 15, respectively. It, however, rejected his proposal in Criminal Case No. CRC 416-2017, on the ground that "[a]ny plea bargaining outside [Department of Justice Circular No. 027] is not acceptable[.]"^[14] The prosecution maintained that it could only consent to the lower penalty of violation of Section 11:

CRIMINAL CASE NO.

OFFENSE CHARGED
(Republic Act No. 9165)

ACCUSED'S PROPOSAL

PROSECUTION'S COUNTER-PROPOSAL

SECTION

PENALTY

SECTION

PENALTY

SECTION

PENALTY

CRC 416-2017
(0.1029 grams of shabu)

Sec. 5
Illegal Sale of Dangerous Drugs

Life Imprisonment and a fine ranging from P500,000.00 to P10,000,000.00

Section 12.
Possession of Paraphernalia for dangerous drugs

Imprisonment of 6 months and 1 day to 4 years

Sec. 11.
Illegal Possession of Dangerous Drugs

Indeterminate Penalty of 12 years and 1 day to 14 years and 8 months and a fine of P300,000.00

Since the parties failed to reach an agreement in Criminal Case No. CRC 416-2017, the trial court issued an Order^[15] on December 6, 2018 denying Sayre's Motion to Plea Bargain and setting the case for pre-trial.

Sayre filed an Urgent Motion for Reconsideration,^[16] urging the trial court to follow A.M. No. 18-03-16-SC and OCA Circular No. 90-2018, instead of Department of Justice Circular No. 027. The trial court, however, denied the Urgent Motion in its January 23, 2019 Order.^[17]

Hence, Sayre filed a Petition for Certiorari and Prohibition^[18] before this Court, praying that Department of Justice Circular No. 27 be declared unconstitutional for contravening OCA Circular No. 90-2018.

Petitioner argues that Department of Justice Circular No. 27 "effectively repealed, altered[,] or modified OCA Circular No. 90-2018, implementing A.M. No. 18-03-16-SC, a procedural rules (sic) promulgated by the Supreme

Court En Banc[.]”[19] He asserts that “it trespassed upon the Supreme Court’s prerogative and exclusive power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts.”[20] He contends that the trial court gravely abused its discretion when it failed to apply Office of the Court Administrator Circular No. 90-2018, which he claims is “now deemed incorporated in Rule 118”[21] of the Rules of Court.[22]

The Office of the Solicitor General counters that petitioner’s direct resort to this Court was improper and violated the doctrine of hierarchy of courts.[23] It argues that Department of Justice Circular No. 27 was an exercise of the Department of Justice’s quasi-legislative power and enjoys the presumption of validity.[24] It contends that the Department of Justice, “as the executive arm of the government mandated to investigate the commission of crimes, prosecute offenders[,] and administer the probation and correction system, has the authority to issue [Department of Justice] Circular No. 27, it being a matter concerning the prosecution of [the] offense.”[25] It asserts that the questioned Circular “essentially limits the discretion of the prosecutors to consent to the offer of plea bargaining, that is, to only give their consent when it is within the allowable range provided in [Department of Justice] Circular No. 27.”[26]

I agree with the ponente that Department of Justice Circular No. 27 does not violate the rule-making power of this Court. A.M. No. 18-03-16-SC and Office of the Court Administrator Circular No. 90-2018 are not part of the Rules of Court. They are, like Department of Justice Circular No. 27, internal guidelines for plea bargaining in drug offenses. Mere conflicting provisions among these issuances will not necessarily render the executive issuance unconstitutional.

A prosecutor’s duty is to prosecute the proper offense based on the sufficiency of the evidence. Consent to a plea of guilty to a lower offense is solely within prosecutorial discretion. Courts do not have the discretion to mandate what offense the prosecution should prosecute.

I

People v. Villarama, Jr.[27] defines plea bargaining as “a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval.”[28] It is usually done by the accused pleading to a lesser offense. This process is expressly provided 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.

A plain reading of this provision 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 his or her offer and the prosecution and the private offended party has consented to the offer.

Rule 118, Section 1(a) likewise 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[.]

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.

This point is made even more evident by how Rule 116, Section 2 is stated. The provision's first sentence states the general rule: a plea to a lesser offense must be made before arraignment. The second sentence contains an exception: the accused may be allowed to withdraw an earlier plea of not guilty for a plea of guilty, after arraignment but before trial.

Rule 116, Section 2[29] of the 1985 Rules of Criminal Procedure had previously allowed plea bargaining at any stage of the prosecution. In *Villarama, Jr.*, the accused pleaded to a lesser offense after the prosecution had already rested its case. This Court stated that the trial court's discretion in accepting the plea must be based on the sufficiency of the prosecution's evidence:

In the case at bar, the private respondent (accused) moved to plead guilty to a lesser offense after the prosecution had already rested its case. In such situation, jurisprudence has provided the trial court and the Office of the Prosecutor with a yardstick within which their discretion may be properly exercised. Thus, in *People v. Kayanan*, We held that the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged. In his concurring opinion in *People v. Parohinog*, then Justice Antonio Barreda explained clearly and tersely the rationale of the law:

... (A)fter the prosecution had already rested, the only basis on which the fiscal and the court could rightfully act in allowing the appellant to change his former plea of not guilty to murder to guilty to the lesser crime of homicide could be nothing more nothing less than the evidence already in the record. The reason for this being that Section 4 of Rule 118 (now Section 2, Rule 116) under which a plea for a lesser offense is allowed was not and could not have been intended as a procedure for compromise, much less bargaining.[30] (Emphasis in the original, citations omitted)

Indeed, a guilty plea "for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused";[31] rather, it should be allowed based on the sufficiency of the prosecution's evidence.

In *Daan v. Sandiganbayan*,[32] however, the plea to a lesser offense was made by the accused at pre-trial, before the prosecution presented its evidence. This Court cautioned that the court's exercise of discretion should not amount to grave abuse:

As regards plea bargaining during the pre-trial stage, as, in the present case, the trial court's exercise of its discretion should neither be arbitrary nor should it amount to a capricious and whimsical exercise of discretion. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.[33]

Nonetheless, in that case, this Court observed that the court's exercise of discretion to allow the plea to a lesser offense was supported by the favorable recommendation of the Office of the Special Prosecutor to approve the motion to plea bargain.[34]

The exercise of the court's discretion in allowing the plea to a lesser offense depends on whether the prosecution actually consents. In other words, the Rules of Court does not state that the prosecution must consent to a plea

deal, it merely tasks the courts to exercise its discretion after the prosecution consents to the plea deal.

II

Estipona has since settled that plea bargaining is a rule of procedure within the scope of this Court's rule-making power under the Constitution.[35] In view of the principle of separation of powers, the two (2) other branches of government cannot enact laws or issue orders that transgress upon this procedural rule.

A.M. No. 18-03-06-SC is, however, not a procedural rule. It is a mere framework to guide parties to what may be considered acceptable plea bargains in drug offenses. Nothing in it mandates that the prosecution, the accused, or the courts must strictly comply with its provisions.

The list under "Acceptable Plea Bargain" of A.M. No. 18-03-06-SC is only recommendatory. Rule 116, Section 2 of the Rules of Court gives the court the discretion to allow the accused to plead guilty to a lesser offense. Rule 118, Section 1(a) tasks courts to consider plea bargaining during pre-trial. The Rules of Court, however, does not mandate the prosecution to consent to the plea if it falls within those listed under the "Acceptable Plea Bargain." A.M. No. 18-03-06-SC was issued as a guideline to the courts as to what plea bargains it may allow in drugs cases. It is by no means a mandate to the prosecution on what offense it should prosecute.

Even Estipona emphasizes judicial deference in the exercise of prosecutorial discretion in the plea bargaining process:

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." [36]

Department of Justice Circular No. 27, thus, cannot be considered unconstitutional for having "repealed, altered[,] or modified"[37] the provisions of A.M. No. 18-03-06-SC. It was issued to guide the prosecution as to whether it should give its consent to a plea bargain. Control over the prosecution of criminal offenses is not within judicial discretion. Just as legislative enactments cannot run counter to this Court's procedural rules, so too should judicial interference not be allowed in prosecutorial decisions.

III

A.M. No. 18-03-06-SC and Department of Justice Circular No. 27 are not necessarily contradictory in the acceptable plea bargain for violation of Section 5 of Republic Act No. 9165. For reference:

REPUBLIC ACT NO. 9165

A.M. NO. 18-03-06-SC

DOJ CIRCULAR NO. 27

OFFENSE

PENALTY

QUANTITY OF THE ILLEGAL DRUG

ACCEPTABLE PLEA BARGAIN

PENALTY

QUANTITY OF THE ILLEGAL DRUG

ACCEPTABLE PLEA BARGAIN

PENALTY

Sec. 5

Illegal Sale of Dangerous Drugs

Life Imprisonment and a fine ranging from P500,000.00 to P10,000,000.00

0.01 gram to 0.99 grams of shabu

Section 12.

Possession of Paraphernalia for dangerous drugs

6 months and 1 day to 4 years and a fine ranging from P10,000.00 to P50,000.00

Less than 5 grams of shabu and less than 300 grams of marijuana

Sec. 11

Illegal Possession of Dangerous Drugs

12 years and 1 day to 20 years and a fine of P200,000.00 to P400,000.00

1.00 gram and above of shabu

No plea bargaining allowed

0.01 gram to 9.99 grams of marijuana

Section 12.

Possession of Paraphernalia for dangerous drugs

6 months and 1 day to 4 years and a fine ranging from P10,000.00 to P50,000.00

10.00 grams of marijuana

No plea bargaining allowed

A.M. No. 18-03-06-SC provides for a more lenient plea of violation of Section 12 for the sale of up to 0.99 gram of shabu, or up to 9.99 grams of marijuana; for the sale of 1.00 gram or more of shabu, or of 10.00 grams or more of marijuana, plea bargain is no longer allowed.

Department of Justice Circular No. 27, however, allows for a plea of violation of Section 11 for those charged with the sale of less than 5.00 grams of shabu or less than 300.00 grams of marijuana. This means that prosecutors may still consent to plea bargains for the sale of 1.00 gram to 4.99 grams of shabu or of 10.00 grams to 299.99 grams of marijuana, even though courts are cautioned not to allow any plea bargain.

Thus, for violation of sale of more than 1.00 gram to 4.99 grams of shabu and 5.00 grams to 299.99 grams of marijuana, Department of Justice Circular No. 27 is actually more beneficial to the accused.

I am, however, aware of the reality that most cases that come before this Court involve sales of less than 1.00 gram of shabu or less than 5.00 grams of marijuana. In *People v. Holgado*:^[38]

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.^[39]

This Court had the same observation in *Lescano v. People*,^[40] which involved the sale of 1.4 grams of marijuana.

It is unfortunate that Department of Justice Circular No. 27 recommends a plea of violation of Section 11 (illegal possession) for these offenses, "in view of the intensified campaign of the government against illegal drugs."^[41] While drugs do pose a menace to our society, government resources should be focused more on prosecuting high-value targets, who are the actual sources of the drug menace, rather than small-time pushers. Prosecutors should bear in mind that the declared policy of the law is not to punish drug offenders but "to provide effective mechanisms or measures to re-integrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence through sustainable programs of treatment and rehabilitation."^[42]

This Court has likewise adopted a much stricter stance for compliance with the requirements of Section 21 of Republic Act No. 9165, as amended,^[43] in cases involving the sale of less than 1.00 gram of shabu or less than 5.00 grams of marijuana.^[44] This has resulted in a number of acquittals in recent years. The prosecution must now be ready with air-tight evidence and perfectly consistent testimonies to secure a conviction for sales of less than 1.00 gram of shabu or less than 5.00 grams of marijuana.

Be that as it may, the matter of consent to a plea of guilty to a lesser penalty is solely within the prosecution's discretion, with which courts should not interfere absent any grave abuse.

Accordingly, I vote to DISMISS the Petition.

[1] Rollo, p. 32.

[2] *Id.* at 33.

[3] *Id.* at 34.

[4] 816 Phil. 789 (2017) [Per J. Peralta, En Banc].

[5] Republic Act No. 9165 (2002), sec. 23 provided:

SECTION 23. Plea-Bargaining Provision. - Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.

[6] Rollo, pp. 55-56.

[7] Rollo, pp. 55-59.

[8] Id. at 60-61.

[9] Id. at 62-63. The Order was penned by Presiding Judge Dax Gonzaga Xenos of Branch 34, Regional Trial Court of Panabo City.

[10] Id. at 62.

[11] Id. at 64-67.

[12] Id. at 64-65.

[13] Id. at 68-69.

[14] Id. at 68.

[15] Id. at 70-71. The Order was penned by Presiding Judge Dax Gonzaga Xenos of Branch 34, Regional Trial Court of Panabo City.

[16] Id. at 72-74.

[17] Id. at 77. The Order was penned by Presiding Judge Dax Gonzaga Xenos of Branch 34, Regional Trial Court of Panabo City.

[18] Id. at 3-31.

[19] Id. at 16.

[20] Id. at 19.

[21] Id. at 23.

[22] Id. at 23-24.

[23] Id. at 119-121.

[24] Id. at 122-125.

[25] Id. at 126.

[26] Id. at 127.

[27] 285 Phil. 723 (1992) [Per J. Medialdea, First Division].

[28] Id. at 730 citing Black's Law Dictionary, 5th Ed. (1979), p. 1037.

[29] RULES OF COURT (1985), Rule 116, sec. 2 provided:

SECTION 2. Plea of guilty to a lesser offense. - The accused, with the consent of the offended party and the fiscal, may be allowed by the trial court to plead guilty to a lesser offense, regardless of whether or not it is necessarily included in the crime charged, or is cognizable by a court of lesser jurisdiction than the trial court. No amendment of the complaint or information is necessary. A conviction under this plea, shall be equivalent to a conviction of the offense charged for purposes of double jeopardy.

[30] People v. Villarama, Jr., 285 Phil. 723, 730-731 (1992) [Per J. Medialdea, First Division] citing People v. Kayanan, 172 Phil. 728 (1978) [Per J. Barredo, En Banc]; and J. Barredo, Concurring Opinion in People v. Parohinog, 185 Phil. 266 (1980) [Per J. Abad Santos, Second Division].

[31] Daan v. Sandiganbayan, 573 Phil. 368, 377 (2008) [Per J. Austria-Martinez, Third Division] citing People v. Kayanan, 172 Phil. 728 (1978) [Per J. Barredo, En Banc].

[32] 573 Phil. 638 (2008) [Per J. Austria-Martinez, Third Division].

[33] Id. at 378 citing People v. Court of Appeals, 545 Phil. 278 (2007) [Per J. Quisumbing, Second Division].

[34] Id. at 379.

[35] CONST., art. VIII , sec. 5 states:

SECTION 5. The Supreme Court shall have the following powers:

....

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[36] Estipona v. Hon. Lobrigo, 816 Phil. 789, 814-815 [Per J. Peralta, En Banc] citing People v. Villarama, Jr., 285 Phil. 723, 732 (1992) [Per J. Medialdea, First Division] and Newton v. Rumery, 480 U.S. 386, 396 (1987).

[37] Rollo, p. 16.

[38] 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

[39] Id. at 100.

[40] 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

[41] Department of Justice Circular No. 27 (2018).

[42] Republic Act. No. 9165 (2002), sec. 2.

[43] Republic Act. No. 10640 (2014).

[44] See People v. Lim , G.R. No. 23 1989, September 4, 2018, [Per J. Peralta, En Banc].

DISSENTING OPINION

CAGUIOA, J.:

I dissent.

I believe, and accordingly submit, that Department of Justice (DOJ) Circular No. 27[1] issued by the DOJ is unconstitutional as it encroaches upon the exclusive power of the Court to promulgate rules. Far from undermining the role of the DOJ in plea bargaining proceedings, I submit this Dissenting Opinion as a reminder of the Court's primordial duty to uphold the separation of powers between the co-equal branches of government.

It is already well-settled, as stated in Estipona, Jr. v. Lobrigo[2] (Estipona), that plea bargaining is a rule of procedure which is within the Court's exclusive domain.[3] It is considered an essential component of the administration of justice geared towards providing a simplified, inexpensive and speedy disposition of cases.[4]

Thus, any executive issuance which runs counter to the rule-making power of the Supreme Court over rules on pleading, practice, and procedure in all courts, including the adoption of the framework governing plea bargaining in the regional trial court, is unconstitutional. As eloquently put by Chief Justice Diosdado M. Peralta (Chief Justice Peralta):

The separation of powers among the three co[-]equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by the Court. x x x

x x x x

x x x To reiterate, the Court's authority to promulgate rules on pleading, practice, and procedure is exclusive and one of the safeguards of Our institutional independence.[5]

As described by Chief Justice Peralta, the underlying objective of both our pronouncement in *Estipona* and Office of the Court Administrator (OCA) Circular No. 90-2018[6] was precisely to declog the dockets and the penal system. Particularly, in elucidating on the reason behind the availability of Section 12 of Republic Act No. (RA) 9165,[7] as amended (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs) as an acceptable bargain for Section 5 of RA 9165 (Sale, Trading, etc. of Dangerous Drugs: Metamphetamine hydrochloride or shabu), the Chief Justice explained:

It bears emphasis that the main reason of the Court in stating in A.M. No. 18-03-16-SC dated April 10, 2018 that "plea bargaining is also not allowed under Section 5 (Sale, Trading, etc. of Dangerous Drugs) involving all other kinds of dangerous drugs, except shabu and marijuana" lies in the diminutive quantity of the dangerous drugs involved. Taking judicial notice of the volume and prevalence of cases involving the said two (2) dangerous drugs, as well as the recommendations of the Officers of the PJA, the Court is of the view that illegal sale of 0.01 gram to 0.99 gram of methamphetamine hydrochloride (shabu) is very light enough to be considered as necessarily included in the offense of violation of Section 12 (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia/or Dangerous Drugs), while 1.00 gram and above is substantial enough to disallow plea bargaining. The Court holds the same view with respect to illegal sale of 0.01 gram to 9.99 grams of marijuana, which likewise suffices to be deemed necessarily included in the same offense of violation of the same Section 12 of R.A. No. 9165, while 10.00 grams and above is ample enough to disallow plea bargaining.[8]

This judicial notice was drawn from the Court's observation of a plethora of acquittals that have been promulgated by the Court, especially in the recent years. In these exemplifying cases, persons charged with Section 5, Article II of RA 9165 were often apprehended for a measly amount of drugs between 0.01 to 0.99 gram in weight. And these persons languished in jail for years, only to be acquitted upon appeal to the Supreme Court because the prosecution failed to strictly comply with the mandatory requirements of Section 21 of RA 9165.

Thus, what is paramount to understand in the ratio of *Estipona* is the Court's wisdom arising from what it has seen in the drive against illegal drugs. And it is to achieve the above objective did the Court, in its wisdom, promulgate OCA Circular No. 90-2018 which provides a one-to-one correspondence of the original offense charged, on the one hand, to the plea bargain offense on the other. Thus, for a charge of Section 5, if the seized drug involved is between 0.01 to 0.99 gram, the Court finds the acceptable bargain to be a plea to a violation of Section 12 (illegal possession of drug paraphernalia) and not a plea to a violation of Section 11 (illegal possession of drugs).

Again, the wisdom of the Court here, as expressed in specific juxtapositions of original charges vis-a-vis acceptable bargains, was not plucked out of thin air, but was primarily based on the Philippine Judges Association recommendation.

Further, the level of specificity with which the Court has itemized the different acceptable plea bargains belies the proposition that OCA Circular No. 90-2018 is merely advisory and recommendatory, or provides only for the "floor" of acceptable plea bargains. Contrary to the majority opinion, OCA Circular No. 90-2018 is, in reality, the Court's way of saying that the lower court will only approve a plea bargain if the same is in accordance with the exact plea bargain crimes provided therein. Stated differently, the corresponding offenses and penalties are proscriptive and not advisory; the stipulated offenses as acceptable plea bargains are the specified offenses, not "the mere floor."

If the valuation of OCA Circular No. 90-2018 were otherwise, as it stands now, the wisdom of the Court will never arise. The objective of declogging court dockets through a simplified, inexpensive and speedy disposition of cases simply will not happen, and the Court's issuance of the Plea Bargaining Framework will ring hollow and be reduced to a wasteful exercise.

Moreover, the very concept of a framework presupposes that any and all guidelines and rules stemming therefrom are in full consonance with the framework itself. The Court is thus precluded from giving a workaround reasoning to "harmonize" or "reconcile" both issuances, and say that OCA Circular No. 90-2018 merely provides for a "floor" from which the DOJ may promulgate more specific guidelines. Verily, it is antithetical to the concept of OCA Circular No. 90-2018 as a framework if the DOJ can have the full discretion to deviate therefrom. The two circulars are, in the final analysis, irreconcilable, and the ponencia as it stands is not harmonization or reconciliation, but a complete surrender of powers.

The contradiction in theorem may be even more demonstrable in praxis, so that given a situation wherein the prosecutor is agreeable to a plea bargain of Section 5 but only down to Section 11 (as stipulated in the DOJ Circular No. 27) and not Section 12 (as prescribed by OCA Circular No. 90-2018) then in reality, the availability of the plea bargain for the accused has been negated on two levels: first, when the prosecutor withholds consent, and second when the court refuses to give its imprimatur.

Without doubt, the DOJ plays an indispensable role in the plea bargaining process. In *Estipona*, the Court in fact recognized that plea bargaining is a process where the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval, and that there is commonly a give-and-take negotiation during the same.^[9] The Court there acknowledged that the consent of the offended party - the State - through the prosecutor is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged.^[10]

Despite this, it is still my view that DOJ Circular No. 27 is unconstitutional. In arguing for a declaration of its unconstitutionality, however, I am merely drawing a line with respect to the Court's sole prerogative insofar as promulgating rules on plea bargaining is concerned - particularly determining which "lesser offenses" may be pleaded guilty to by an accused.

This, in no way, demeans the function of the DOJ in plea bargaining, or otherwise takes from it the level of discretion it exercises, as when it considers whether to allow plea bargaining on a case-to-case basis. To be sure, as the principal prosecutorial arm of the government, the DOJ and its prosecutors have the sole and exclusive discretion to determine whether, for instance, the evidence in a particular case is enough to convict the accused - a determination that, in turn, plays into the DOJ's sole and exclusive decision on whether it will agree to a plea bargain. Whether or not the plea bargain as offered by the accused may be approved is well within the unhampered, unfettered discretion of the prosecution. That is beyond question. But if or when the prosecutor opens the case to a plea bargain, the proceedings then go within the exclusive ambit of the Court's rule-making power, specifically the determination of the "lesser offense" that the accused may plead guilty to.

For although it is conceded and recognized that the DOJ exercises prosecutorial discretion, precisely its role, as the prosecutorial arm, prevents it from objectively assessing plea bargaining situations as regards the penalties to plead guilty to. On the other hand, the Court, with its mandate on impartiality, may disinterestedly evaluate a plea bargain scenario and assess where the middle ground really lies. For yet another flaw in the conceptualization of OCA Circular No. 90-2018 as a mere "minimum" or "floor" is that it effectively amounts to this Court giving undue deference to the prosecutorial arm, instead of upholding the rationale of the plea bargaining process as a middle ground between the prosecution and the accused.

In declaring that it has the exclusive power to promulgate rules on plea bargaining, the Court only recognizes the role of the Judiciary under our Constitutional framework as the impartial tribunal that tries 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. In contrast, it is the mandate of the DOJ 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. This is the reason why it is ultimately the Court which has the power to promulgate the rules on plea bargaining. This is the reason behind *Estipona*.

Finally, the proposition that DOJ Circular No. 27 is but an "internal guideline" and binding only on the prosecutors,[11] in my view, does not hold water. While the DOJ may issue its own guidelines to govern the internal affairs of its office, the "internal" character of its guidelines ends where the rules therein directly affect matters outside of the institution itself. This is especially true in the case of a plea bargaining process, where the consent of the prosecutor, if withheld on the basis of an internal, albeit overstepping instruction, may forestall any further negotiations, and ultimately amount to deadlocks. This predicament cannot be farther from that which is contemplated by law.

All told, there is more than enough basis to consider DOJ Circular No. 27 as unconstitutional for straightforwardly encroaching upon the exclusive rule-making power of the Supreme Court.

Based on these premises, I vote to GRANT the Petition.

[1] Amended Guidelines on Plea Bargaining for Republic Act No. 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," June 26, 2018.

[2] G.R. No. 226679, August 15, 2017, 837 SCRA 160.

[3] See CONSTITUTION, Art. VIII, Sec. 5(5).

[4] *Estipona, Jr. v. Lobrigo*, *supra*.

[5] *Id.* at 179-181; emphasis and underscoring supplied, citations omitted.

[6] Plea Bargaining Framework in Drugs Cases.

[7] Entitled "Comprehensive Dangerous Drugs Act of 2002."

[8] A.M. No. 18-03-16-SC, April 2, 2019, Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association; italics in the original.

[9] *Estipona, Jr. v. Lobrigo*, *supra* note 2 at 189.

[10] *Id.* at 191.

[11] J. Zalameda, Separate Concurring Opinion, p. 5.

SEPARATE CONCURRING OPINION

LAZARO-JAVIER, J.:

May the Court declare as unconstitutional the select portions in DOJ Circular No. 27 which vary from the plea bargaining provisions of OCA Circular No. 09-2018 in drug cases?

I submit that the Court has no such authority.

First. Both DOJ Circular No. 27 and OCA Circular No. 09-2018 are mere guidelines on plea bargaining which the accused and the prosecution cannot be compelled to submit, nay, accept.

The DOJ simply exercised its right as the prosecuting arm of the State when it promulgated its own governing rules in relation to plea bargaining. In the same manner, the Court merely exercised its right to promulgate its own procedural rules on the same matter. By their nature, these circulars are not mandatory as against the accused and the prosecution, hence, they may not be imposed on the accused or the prosecution or both. In so far as OCA Circular No. 09-2018 is concerned, it merely serves as advisory for the courts of the acceptable minimum or floor limit of the offense or offenses to which an accused may plea bargain.

Second. In our jurisdiction, plea bargaining has been defined as a process where both the accused and the prosecution work out a mutually satisfactory disposition of the case at hand subject to court approval.[1] It nonnally involves the accused's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.[2] Plea bargaining is authorized under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, viz:

SEC. 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.

For there to be a valid plea bargain, it is crucial that both the accused and the prosecution conform to it. Verily, there is a give-and-take negotiation common in plea bargaining. Plea bargaining is notably characterized by mutual concessions arrived at by both the prosecution and the defense in order to avoid potential losses. In truth, when properly administered, plea bargaining is to be encouraged because the chief virtues of the system, i.e., speed, economy, and finality, can benefit the accused, the offended party, the prosecution, and the court.[3]

As plea bargaining operates on mutuality of advantage, the rules on plea bargaining neither create a right nor take away a vested right. In fact, they function as a means to implement an existing right. They regulate the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.[4]

Third. The decision to plead guilty is known to be heavily influenced by the accused's appraisal of the prosecution's case against him or her as well as the apparent likelihood of securing leniency should a guilty plea be offered and accepted. In any event, whether the accused pleads to the offense charged or to a lesser crime, a guilty plea is considered as a serious and sobering occasion. It signifies a waiver of the fundamental rights to be presumed innocent until the contrary is proved, to be heard by himself or herself and counsel, to meet the witnesses face to face, to bail (except those charged with offenses punishable by reclusion perpetua when

evidence of guilt is strong), to be convicted by proof beyond reasonable doubt, and not to be compelled to be a witness against himself or herself.[5]

The accused, nevertheless, has no constitutional right to plea bargain. No basic rights are infringed by trying him or her rather than accepting a plea of guilty. In truth, the prosecutor need not do so if he or she prefers to go to trial. In plea bargaining, the prosecution has the right to prosecute. This right cannot be curtailed without prejudice to the prosecution conforming to a proposal of the accused to plead to a lesser offense. Still, where the prosecution does not agree to a plea bargaining proposal because it opts to exercise its right to prosecute the crime charged to its fullest or to a lesser offense but a higher offense than what the accused proposed in his or her bid for plea bargaining, there is no obligation on the part of the prosecution to agree, much less be compelled. Not even this Court may command it.

Again, the very essence of plea bargaining is mutuality. Under the present Revised Rules on Criminal Procedure, the acceptance of an offer to plead guilty is not a demandable right of the accused. It depends on the mutual consent of the offended party and the prosecutor. Undoubtedly, this is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged.[6]

Fourth. The plea is further addressed to the sound discretion of the trial court, which may allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged. The word "may" in Section 2, Rule 116 of the Revised Rules on Criminal Procedure denotes an exercise of discretion upon the trial court on whether to allow the accused to make such plea. Trial courts are enjoined to remember that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.[7]

Accordingly, I vote to DISMISS the petition.

[1] *Estipona, Jr. v. Lobrigo*, 816 Phil. 789, 813 (2017).

[2] *Daan v. Sandiganbayan* (Fourth Division), 573 Phil. 368, 375 (2008).

[3] *Supra* note 1.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

SEPARATE CONCURRING OPINION

ZALAMEDA, J.:

The 1987 Constitution vests upon the Supreme Court the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts. This rule-making power is exclusive; it is not shared by this Court with the Congress, more so with the Executive.[1]

Pursuant to its rule-making power, the Court adopted in Administrative Matter (AM) 18-03-16-SC the Plea Bargaining Framework in Drugs Cases providing the acceptable plea bargains which may be approved by courts.[2] After the adoption of the Plea Bargaining Framework, the Department of Justice (DOJ) issued

Department Circular No. 27 (DOJ Circular) providing amended guidelines on plea bargaining for Republic Act No. (RA) 9165. The DOJ Circular provides. the acceptable plea bargains directed to all prosecutors, the prescribed procedure before the prosecution grants consent to a plea bargain, and the procedure observed if a plea bargain is approved without the prosecution's consent.[3] Notably, a portion of the acceptable plea bargains under the DOJ Circular differed from the acceptable plea bargains found in the Court's Plea Bargaining Framework.

The constitutionality of the DOJ Circular is directly challenged before the Court in this petition for certiorari and prohibition. According to petitioner, the different plea bargains provided in the DOJ Circular effectively repealed, altered, or modified the Plea Bargaining Framework. Thus, petitioner submits that the DOJ encroached upon the Courts exclusive rule-making power.

I CONCUR with the denial of the petition.

Considering the very important and pivotal issues raised in the petition, the policy on judicial hierarchy should not deter the Court from rendering a final and definitive pronouncement

While the Court enjoins observance of the policy on the hierarchy of courts, the Court may still act on petitions for the extraordinary writs of certiorari and prohibition when absolutely necessary or when serious and important reasons exist to justify an exception to the policy.[4]

I agree with the ponencia that serious and compelling reasons justify the direct resort of petitioner to the Court. The perceived inconsistency between the Court's Plea Bargaining Framework and the DOJ Circular has far-reaching implications which affect on-going plea bargaining before trial courts. At the same time, the confusion raised by the seemingly conflicting provisions severely hinders the efficiency of courts in tackling cases involving illegal drugs.

In *Estipona v. Lobrigo*,^[5] the Court acknowledged that the Philippine problem on illegal drugs has reached "epidemic," "monstrous," and "harrowing" proportions, and that its disastrously harmful social, economic, and spiritual effects have broken the lives, shattered the hopes, and destroyed the future of thousands especially our young citizens. Fully aware of the gravity of the drug menace and its direct link to certain crimes, the Court, within its sphere, must do its part to assist in the all-out effort to lessen, if not totally eradicate, the continued presence of drug lords, pushers and users.^[6]

An underlying purpose for the Plea Bargaining Framework under A.M. No. 18-03-16-SC is to make it "simpler and easier to understand."^[7]Indubitably, a properly administered plea bargaining system results in speed, economy, and finality of judicial processes which will ultimately benefit the accused, the offended party, the prosecution, and the courts.^[8] The Court adopted the Plea Bargaining Framework precisely to accomplish the speedy disposition of drugs cases. However, if there is confusion in its implementation, courts will find it difficult to accomplish this goal.

Bearing these in mind, the Court must proceed with its duty to make a final and definitive pronouncement that will shed light over questions clouding the implementation of the Plea Bargaining Framework in Drugs Cases.

The accused has no constitutional right to plea bargain. The approval of a plea bargain requires the consent of the offended party and the prosecutor

At the outset, petitioner is not automatically entitled to the grant of his proposed plea bargain. The Court's ruling in *Estipona, Jr. v. Lobrigo*^[9] and the Plea Bargaining Framework did not do away with the requirement of consent from the prosecutor.

It is well-settled that acceptance of an offer to plead guilty is not a demandable right Under Section 2, Rule 116 of

the 2000 Revised Rules of Criminal Procedure, the grant of a plea bargain 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.[10] An accused 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 proceed with the trial.[11]

In *People v. Villarama*, [12] the Court stressed that consent from the prosecutor is a condition precedent before an accused may validly plead guilty to a lesser offense. The reason for this is obvious. The prosecutor has full control of the prosecution of criminal actions. Consequently, it is his duty to always prosecute the proper offense, not any lesser or graver one, when the evidence in his hands can only sustain the former. And the consent of the offended party, i.e. the state, will have to be secured from the prosecutor who acts in behalf of the government.[13]

Here, the DOJ Circular underscores the necessity of the prosecution's consent before an accused may plead guilty to a lesser offense. The DOJ Circular further recognizes the procedure before the prosecution may give its consent to a plea bargain.

Under the DOJ Circular, the discretion of prosecutors to give consent to plea bargaining offers is subject to the strict control and monitoring by the DOJ. The circular also provides all plea offers must be initiated in writing by way of a formal motion filed by the accused in court. Thereafter, the prosecution shall request for a drug dependency assessment pursuant to AM 18-03-16-SC. This drug dependency report shall be a condition sine qua non for the prosecution to give its consent to the plea bargain. If the court approves a plea bargain without the prosecution's consent, the prosecutor shall interpose a vigorous objection in open court and manifest that the State does not give its consent.[14]

The DOJ Circular shows that not all of its contents contravened the Court's Plea Bargaining Framework. In this case, the only plea bargain deemed unacceptable to the prosecution was the proposal involving illegal sale of dangerous drugs. The other plea bargain proposals pertaining to illegal possession of dangerous drugs and drug paraphernalia were both accepted by the prosecution. While it is unfortunate that the DOJ did not fully adopt all acceptable plea bargains found in the Court's Plea Bargaining Framework, the plea bargains which are consistent in both may still be used and applied by both prosecutors and litigants.

DOJ Department Circular No. 27 does not repeal, alter, or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC

Now, the primordial issue to be resolved is how to reconcile the seemingly conflicting plea bargains.

The different acceptable plea bargains found in the DOJ Circular and the Court's Plea Bargaining Framework are harmonized by recognizing the following distinctions:

The Plea Bargaining Framework was adopted pursuant to the rule-making power of the Court. The acceptable plea bargains found therein are acceptable for the purpose of approval before the courts. It is a rule of practice and procedure to be observed in judicial proceedings.

On the other hand, the DOJ Circular is a guideline arising from the prosecutor's full control of the prosecution of criminal actions. The acceptable plea bargains found therein are acceptable for the purpose of giving consent by the prosecution. It is merely an internal guideline for prosecutors to follow before they may give their consent to proposed plea bargains.

The internal nature of the DOJ Circular is abundantly clear. To start, the DOJ Circular expressly addressed and directed its guidelines "[t]o: ALL PROSECUTORS." [15] Further, the body text explained the DOJ's rationale for

issuing internal guidelines to its own prosecutors:

While plea bargaining is now allowed pursuant to the case of "Salvador Estipona, Jr. y Asuela v. Hon. Frank E. Lobrigo," the discretion of prosecution offices to give their consent to offers of plea bargaining in dangerous drugs cases is subject to strict control and monitoring by this Department in view of the intensified campaign of the government against illegal drugs.[16]

The explicit purpose of the guidelines was to control and monitor the exercise of discretion by prosecution offices before consenting to plea bargains. Obviously, the guidelines are binding only upon these prosecution offices, and shall not affect the discretion of the courts. With due respect, the view that the DOJ Circular will "ultimately amount to deadlocks"[17] is inaccurate. If the prosecution does not give consent, then the next course of action for the court is simple: just continue with the ordinary course of proceedings. When the prosecution withholds its consent, it basically means no plea bargaining agreement was reached and trial merely proceeds. Ultimately, there is no such danger for any "deadlock" to occur.

To illustrate, when an accused makes a proposal to plea bargain, the prosecutor is faced with two options: to give or withhold its consent. In determining the appropriate response, the prosecutor turns to the DOJ Circular which provides the acceptable plea bargains and the procedure before giving consent. If there is no consent, the prosecutor simply rejects the proposal and the case merely proceeds. If the court resolves on approving the plea, the prosecutor is directed by the circular to interpose a vigorous objection and manifest that the State does not consent to the plea bargain, thus -

In the event that the court insists on approving a plea bargain that is not allowed or goes beyond what is allowed under these guidelines, the trial prosecutor shall interpose his/her vigorous objection in open court and manifest that the State does not give its consent to the plea bargain.[18]

Further, the foregoing interpretation of the DOJ Circular is admitted by respondents. Respondents averred that the circular only applies to the negotiation stage of plea bargaining, i.e., before the prosecution consents. Thereafter, should there be a plea bargaining agreement by the parties, the approval of the same becomes subject to the sound discretion of the court.[19]

In choosing to respect the prosecution's discretion to give or withhold consent, the Court is not surrendering any of its powers.[20] Instead, it is an exercise of sound judicial restraint. Courts cannot forcefully insist upon any of the parties to plead in accordance with the Plea Bargaining Framework. To emphasize, when there is no unanimity between the prosecution and the defense, there is also no plea bargaining agreement to speak of. If a party refuses to enter a plea in conformity with the Plea Bargaining Framework, a court commits grave abuse of discretion should it unduly impose its will on the parties by approving a plea bargain and issuing a conviction based on the framework.

At any rate, plea to a lesser offense is still possible even up to the point when the prosecution rests its case.[21] After presentation of prosecution evidence, the parties may still weigh and consider their options to plea bargain based on such evidence. If entering a plea bargaining agreement remains beneficial to the mutual interests of the prosecution and the defense, they are not precluded from doing so during that stage in the proceedings. Even at such a late stage, the parties are still given sufficient opportunity to submit a proposed plea bargain, subject to approval from the court after considering the evidence on record -

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.[22]

When the Court's rule-making power and the prosecution services' full discretion and control over criminal prosecutions are properly delineated and distinguished it becomes apparent that the DOJ Circular does not contravene the Plea Bargaining Framework found in A.M. No. 18-03-16-SC. Simply stated, the DOJ Circular did not encroach upon the Supreme Court's power to promulgate rules on pleading, practice, and procedure in all courts.

Conclusion

Plea bargaining has been defined as a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. There is give-and-take negotiation common in plea bargaining.[23]

In reaching this mutual agreement, the prosecution has sufficient authority to give or withhold its consent. Courts will not interfere with this authority considering that the prosecution service has full control over criminal prosecutions. However, once the prosecution and the accused reach a mutual agreement, the discretion to approve or deny the plea bargain now falls under the exclusive domain of the courts, dependent on the circumstances of each case. As then Associate Justice Diosdado M. Peralta, now Chief Justice, puts it -

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, then the judges may overrule such objection 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 has 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 that 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.[24]

It should be emphasized that the Regional Trial Court (RTC) correctly ordered the continuation of proceedings because there was no mutual agreement to plea bargain. Since the prosecution did not give its consent pursuant to Section 2, Rule 116 of the Revised Rules of Criminal Procedure the RTC properly exercised discretion in choosing to proceed with trial.

ACCORDINGLY, I vote to DENY the petition for certiorari and prohibition there being no grave abuse of discretion committed by the Regional Trial Court of Panabo City, Davao Del Norte.

[1] Re: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees, A.M. No. 08-2-01-0, 626 Phil. 93-110, 11 February 2010.

[2] AM 18-03-16-SC, 10 April 2018.

[3] DOJ Department Circular No. 27, 26 June 2018.

[4] Bañez, Jr v. Concepcion, 693 Phil. 399-416 (2012); G.R. No. 159508, 29 August 2012.

[5] 816 Phil. 789-820 (2017); G.R. No. 226679, 15 August 2017.

[6] Id.

[7] A:M. No. 18-03-16-SC, 10 April 2018 -

On 05 April 2018, then Associate Justice Diosdado M. Peralta, now Chief Justice, met with the Officers of the Philippine Judges Association, namely: Hon. Felix P. Reyes (President), Hon. Frank E. Lobrigo (Senior Vice-President), Hon. Francisco P. Felizmenio (VP Legal), Hon. Maria Paz R. Reyes-Yson (Secretary-General), Hon. Divina Gracia L. Pelino and Hon. Raquelan A. Vasquez (Presidential Advisers), to discuss the revisions on the plea bargaining framework, which was made simpler and easier to understand, and addressed the concerns raised in the En Banc Agenda of April 3, 2018; x x x

[8] Supra note 5.

[9] G.R. No. 226679, 15 August 2017.

[10] Popovich v. People, G.R. No. 238244 (Notice), 09 July 2018.

[11] Supra at note 5.

[12] 285 Phil. 723-734 (1992); G.R. No. 99287, 23 June 1992.

[13] Id.

[14] DOJ Department Circular No. 27 dated 26 June 2018.

[15] DOJ Department Circular No. 27, 26 June 2018, p. 1.

[16] DOJ Department Circular No. 27, 26 June 2018, p. 10.

[17] J. Caguioa, Dissenting Opinion.

[18] Supra at note 3.

[19] Rollo, pp. 129-130.

[20] J. Caguioa, Dissenting Opinion.

[21] Supra at note 5.

[22] Id.

[23] Supra at note 17.

[24] A.M. No. 18-03-16-SC (Re: Letter of Associate Justice Diosdado M. Peralta on the suggested Plea Bargaining Framework submitted by the Philippine Judges Association); En Banc Resolution dated 02 April 2019.

CONCURRING OPINION

LOPEZ, J.:

The Court must exercise its power of judicial review sparingly. This judicial approach is called for when the

subject of review is an administrative circular which partakes the nature of a statute and has in its favor the presumption of legality. The validity of an administrative issuance must be upheld absent sufficient evidence showing that it exceeded the bounds of the law.

This case stemmed from the Regional Trial Court's Order dated December 6, 2018 which denied the accused's motion for plea bargaining in Criminal Case No. CRC 416-2017 involving the illegal sale of shabu with a total weight of 0.1029 grams. The accused invoked OCA Circular No. 90-2018 and proposed to plea for the lesser offense of illegal possession of drug paraphernalia. However, the prosecution objected explaining that the acceptable plea bargain for the offense charged under DOJ Circular No. 27 is illegal possession of shabu.

For failure to reach a consensus, the RTC denied the accused's motion for plea bargaining and set the case for pre-trial. Unsuccessful at a reconsideration, the accused filed a petition for certiorari and prohibition before this Court ascribing grave abuse of discretion on the part of the RTC. Also, the accused assailed the constitutionality of DOJ Circular No. 27 for altering the more favorable plea bargaining provision of OCA Circular No. 90-2018.

I concur with the ponencia that the RTC did not commit grave abuse of discretion and that the DOJ Circular No. 27 is not unconstitutional.

Prefatorily, I do not find any grave abuse of discretion on the part of the RTC when it denied the accused's motion for plea bargaining. In *Estipona, Jr. v. Lobrigo*,^[1] this Court allowed plea bargaining in drugs cases and declared Section 23 of RA 9165 unconstitutional for being contrary to its rule-making authority. Nevertheless, the decision did not change the nature of plea bargaining in our jurisdiction which is defined as a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval.^[2] It even emphasized the necessity of the prosecutor's consent as one of the conditions precedent to a valid plea bargaining, thus:

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."

The plea is further addressed to the sound discretion of the trial court, which may allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged. The word may denotes an exercise of discretion upon the trial court on whether to allow the accused to make such plea.⁶¹ Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused. (Emphases Supplied).

Moreover, it is settled that the RTC has the authority to proceed or disallow the plea bargaining despite objection from the prosecutor. As discussed in OCA Circular No 80-2019 and A.M. No. 18-03-16-SC, April 2, 2019,^[3] plea bargaining is addressed to the sound discretion of the judge, thus:

Significantly, plea bargaining is always addressed to the sound discretion of the judge, guided by the 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, then the judges may overrule such objection 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, they cannot just defer to the policy of another Branch of 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 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 that 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. (Emphases Supplied)

Indeed, given the objection of the prosecutor, the RTC may deny the accused's motion for plea bargaining and continue with the proceedings. This is what transpired here. The RTC's deference to prosecutorial decisions as to who to prosecute does not constitute grave abuse of discretion which is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.

Similarly, I find no reason to strike down DOJ Circular No. 27. Foremost, the Secretary of Justice issued the circular in the exercise of his power of direct control and supervision over the prosecutors.[4] The circular provides that "[i]n the event that the court insists on approving a plea bargain that is not allowed or goes beyond what is allowed under these guidelines, the trial prosecutor shall interpose his/her vigorous objection in open court and manifest that the State does not give its consent to the plea bargain." As an administrative issuance, the circular enjoys the presumption of legality.[5]

Further, DOJ Circular No. 27 is an expression of the prosecution's consent which cannot be undermined lest there will be no valid plea bargaining. As discussed in *Estipona*, there is give-and-take negotiation and mutuality of advantage common in plea bargaining. As such, the accused cannot insist his right to plead guilty to a lesser offense absent the prosecutor's consent.

More importantly, DOJ Circular No. 27 can be harmonized with OCA Circular No. 90-2018. It is a principle in statutory construction that in case of seemingly conflicting laws, rules or regulations, careful scrutiny must be had before any court may strike down either of them as void and unconstitutional.[6] In this case, both circulars provided for the "acceptable plea bargain" in drugs cases which are not mutually exclusive of each other. Here, OCA Circular No. 90-2018 did not limit the acceptable plea bargain of illegal sale of shabu to illegal possession of drug paraphernalia. Rather, I share the OSG's position that it merely provides the lowest possible lesser crime the court may allow the accused to plead guilty. Thus, the court may allow a plea of guilty to a more serious offense but which is still lesser than the offense charged. Hence, the prosecution's counter-proposal of plea to the lesser offense of illegal possession of shabu is still within the framework of OCA Circular No. 90-2018. With this interpretation, there can be no irreconcilable inconsistency between the two circulars.[7]

Lastly, it must be stressed that declaring DOJ Circular No. 27 unconstitutional without efforts to harmonize the perceived conflicting provisions with OCA Circular No. 90-2018 will remove the negotiated and mutual nature of plea bargaining and will defeat the Secretary of Justice's power of control and supervision over the public prosecutors. At any rate, a plea bargaining cannot be allowed for the sole convenience of the accused which is further outweighed by the duty to prosecute drug offenders.

FOR THESE REASONS, I concur to DENY the petition.

[1] G.R. No. 226679, August 15, 2017.

[2] *Id.*, citing *People v. Villarama, Jr.*, 285 Phil. 723 (1992).

[3] Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association.

[4] In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform such duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. Here, Section 39, Chapter 8, Book IV in relation to Section 5, 8, and 9, Chapter 2, Title III of the Revised Administrative Code gives the Secretary of Justice supervision and control over the Office of the Chief Prosecutor and the Provincial and City Prosecution Offices. The scope of this power is likewise delineated in Section 38, paragraph 1, Chapter 7, Book IV of the same Code. See also *Ledesma v. Court of Appeals*, G.R. No. 113216 September 5, 1997; and *De Lima v. Reyes*, G.R. No. 209330, January 11, 2016.

[5] *Land Bank of the Philippines v. American Rubber Corporation*, G.R. No. 188046, July 24, 2013.

[6] *Republic v. Yahan*, G.R. No. 201043, June 16, 2014.

[7] On November 21, 2017 the Secretary of Justice issued DOJ Circular No. 61 or the Guidelines on Plea Bargaining Agreement for RA 9165. Meantime, the Supreme Court on April 10, 2018 promulgated A.M. No. 18-03-16-SC or the Plea Bargaining Framework in Drug Cases. In view of the adoption by the Supreme Court of its own framework, the Secretary of Justice saw the need to revise the previous guidelines and issued DOJ Circular No. 27 or the Amended Guidelines on Plea Bargaining for RA 9165.

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