G.R. Nos. 244413 and 244415-16 — NURULLAJE SAYRE y MALAMPAD @ "INOL," *petitioner*, ***versus*** **HON. DAX GONZAGA XENOS, in his capacity as the Presiding Judge of the Regional Trial Court of Panabo City, Davao del Norte, Branch 34; HON. MENARDO I. GUEVARRA, Secretary of the Department of Justice; and PEOPLE OF THE PHILIPPINES,** *respondents.*

Promulgated:

February 18, 2020

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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

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[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.

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> 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 for 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.

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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.

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-à-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.

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

10 Id. at 191.

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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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11 *J.* Zalameda, Separate Concurring Opinion, p. 5.