

EN BANC

G.R. Nos. 244413, 244415-16 (*Nurullaje Sayre y Malampad @ "Inol", Petitioner v. Hon. Dax Gonzaga Xenos, in his capacity as the Presiding Judge of 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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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.<sup>1</sup> It normally 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.<sup>2</sup> Plea bargaining is authorized under

<sup>1</sup> *Estipona, Jr. v. Lobrigo*, 816 Phil. 789, 813 (2017).

<sup>2</sup> *Daan v. Sandiganbayan (Fourth Division)*, 573 Phil. 368, 375 (2008).

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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.<sup>3</sup>

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.<sup>4</sup>

**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.<sup>5</sup>

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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*





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.<sup>6</sup>

**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.<sup>7</sup>

Accordingly, I vote to **DISMISS** the petition.


  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

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**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court