

Agenda of 18 February 2020
Item No. 30

EN BANC

G.R. Nos. 244413, 244415-16 – *Nurullaje Sayre y Malampad @ “INOL,”* Petitioner, v. *Hon. Dax Gonzaga Xenos, in his capacity as Presiding Judge of RTC, Branch 34, Panabo City, Davao del Norte; 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

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*.

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.



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 According to petitioner, the different plea bargains provided in the DOJ Circular effectively repealed, altered, or modified the *Plea Bargaining Framework*.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 Court's 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

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.*

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

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* at 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.



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

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.



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

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.



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*.

¹⁸ *Supra* at note 3.

¹⁹ *Rollo*, pp. 129-130.

²⁰ *J. Caguioa, Dissenting Opinion.*



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

²¹ *Supra* at note 5.

²² *Id.*

²³ *Supra* at note 17.



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

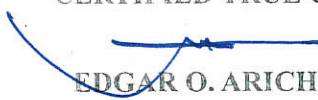
It should be emphasized that the Regional Trial Court (RTC) correctly ordered the continuation of proceedings because there was no mutual agreement to plea bargain. Since the prosecution did not give its consent pursuant to Section 2, Rule 116 of the Revised Rules of Criminal Procedure, the RTC properly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


RODIL V. ZALAMEDA
Associate Justice

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.

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

EN BANC

G.R. Nos. 244413, 244415-16 – NURULLAJE SAYRE y MALAMPAD, petitioner, v. HON. DAX GONZAGA XENOS, in his capacity as the Presiding Judge of Regional Trial Court of Panabo City, Davao del Noret, 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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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,

¹ G.R. No. 226679, August 15, 2017.

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

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.

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 offer to plead guilty to a lesser offense absent the prosecutor's consent.

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.

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.

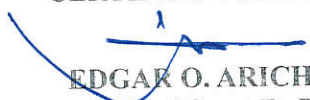
FOR THESE REASONS, I concur to DENY the petition.


MARIO V. LOPEZ
Associate Justice

⁶ Republic v. Yahon, 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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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court