



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

G.R. No. 259728

Present:

CAGUIOA, J.,*
 INTING, ** *Acting Chairperson,*
 GAERLAN,
 DIMAAMPAO, and
 SINGH, JJ.

- versus -

DARWIN REYES y CABORNAY,
Respondent.

Promulgated:
October 12, 2022

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DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ filed by the People of the Philippines (petitioner), through the Office of the Solicitor General, assailing the Decision² dated June 28, 2021 and the Resolution³ dated March 10, 2022 of the Court of Appeals (CA) in CA-G.R. SP No. 164335. The CA annulled and set aside the Order⁴ dated November 26, 2019 of Branch 1, Regional Trial Court (RTC) of Balanga City, Bataan in Criminal Case No. 20215 that denied the motion for reconsideration of Darwin Reyes y Cabornay (respondent) and disqualified him to apply for probation.

* On official leave.

** Per Special Order No. 2918-REVISED dated October 12, 2022.

¹ *Rollo*, pp. 22-38.

² Id. at 41-52. Penned by Associate Justice Emily R. Aliño-Geluz and concurred in by Associate Justices Victoria Isabel A. Paredes and Angelene Mary W. Quimpo-Sale.

³ Id. at 53-59.

⁴ Id. at 84-87. Penned by Judge Angelito I. Balderama.

The Antecedents

The case stemmed from two separate Informations⁵ charging respondent with violation of Sections 5⁶ and 11,⁷ Article II of Republic Act No. (RA) 9165⁸ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended. The accusatory portions of the Informations provide:

Criminal Case No. 20215
(For violation of Section 11, Article II of RA 9165)

That on or about October 23, 2019, in Balanga City, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully have in his possession, custody and control two (2) heat-sealed transparent plastic sachets containing methamphetamine hydrochloride commonly known as “shabu”, a dangerous drugs, with total weight of ZERO POINT ONE ONE EIGHT (0.118) GRAM.

CONTRARY TO LAW.⁹

Criminal Case No. 20216
(For violation of Section 5, Article II of RA 9165)

That on or about October 23, 2019, in Balanga City, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully sell, distribute and give away to another one (1) heat-sealed transparent sachet containing methamphetamine hydrochloride commonly known as “shabu”, a dangerous drug, weighing ZERO POINT ZERO SIX SIX (0.066) GRAM.

CONTRARY TO LAW.¹⁰

Upon arraignment, respondent pleaded “not guilty” to the charges.¹¹

⁵ Id. at 122-125.

⁶ SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — x x x

⁷ SEC. 11. *Possession of Dangerous Drugs.* — x x x

⁸ Entitled “An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and For Other Purposes,” approved on June 7, 2002.

⁹ *Rollo*, p. 122.

¹⁰ Id. at 124.

¹¹ Id. at 25.

Trial ensued.

During the hearing on November 15, 2019, respondent moved in open court that he be allowed to plead guilty to a lesser offense in Criminal Case No. 20216, *i.e.*, from violation of Section 5 (illegal sale) to Section 12 (illegal possession of drug paraphernalia), Article II of RA 9165. The prosecution objected to respondent's motion on the ground that the proposed plea does not fall within the conditions set forth in Department of Justice (DOJ) Circular No. 027.¹²

The RTC Ruling

In an Order¹³ dated November 15, 2019, the RTC granted respondent's motion to plea to a lesser offense in Criminal Case No. 20216 and convicted him of violation of Section 12, Article II of RA 9165, thus:

WHEREFORE, finding accused Darwin Reyes guilty beyond reasonable doubt to the lesser offense penalized under Sec. 12, Art.2 of RA 9165, pursuant to A.M. No. 18-03-16-SC, he is hereby sentenced to an indeterminate penalty of imprisonment ranging from six months and one day as minimum to three (3) years as maximum and to pay a fine of Php10,000.00 with subsidiary imprisonment in case of insolvency.

In this connection, the District Jail Warden of Bataan is hereby directed to bring accused Darwin Reyes to the Bataan Crime Laboratory for drug testing. Should accused Darwin Reyes yield POSITIVE for drug use, he shall be referred to Liyang Treatment and Rehabilitation Center for further drug dependency test and shall undergo rehabilitation for a period of not less than six months in which case, the period in which he was in rehabilitation shall be computed and deducted from the entirety of the sentence imposed hereof. Should accused yield NEGATIVE for (*sic*) drug use, the District Jail Warden is hereby directed to release accused Darwin Reyes from his hold after he is able to completely serve the entire period of the sentence imposed upon him unless he is being held from some other lawful cause or causes.

The period within which accused are in preventive imprisonment shall be considered in the computation of his sentence.

Further, the District Jail Warden is directed to submit a report

¹² Amended Guidelines on the Plea Bargaining for Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002"; *rollo*, p. 125.

¹³ *Rollo*, pp. 81-83. Penned by Judge Angelito I. Balderama.

relative hereof.

Make it of record that accused is ineligible to apply for probation in this case.

x x x x

SO ORDERED.¹⁴ (Italics supplied)

Respondent filed a motion for reconsideration of the Order dated November 15, 2019 particularly as to the RTC's declaration that he is ineligible to apply for probation. However, the RTC denied the motion in its subsequent Order dated November 26, 2019.¹⁵

Undaunted, respondent filed a Petition for *Certiorari*¹⁶ under Rule 65 of the Rules of Court before the CA.

The CA Ruling

In the assailed Decision¹⁷ dated June 28, 2021, the CA granted respondent's petition and annulled the RTC Order dated November 26, 2019. It deleted the portion of the RTC Order that disqualified respondent to apply for probation, thus:

ACCORDINGLY, the instant petition is **GRANTED**. The *Order* dated November 26, 2019 of the Regional Trial Court of Balanga City, Bataan, Branch 1 in Criminal Case No. 20215 (*sic*) is **ANNULLED** and **SET ASIDE**. On the other hand, the *Order* dated November 15, 2019 is hereby **MODIFIED**, in that the sentence: "**Make it of record that accused is ineligible to apply for probation in this case**" is **DELETED**. Petitioner Darwin C. Reyes is hereby given a period of fifteen (15) days from notice of this Decision within which to file his application for probation before the court a quo.

SO ORDERED.¹⁸ (Emphasis in the original)

Petitioner filed a Motion for Reconsideration¹⁹ which the CA denied in its Resolution²⁰ dated March 10, 2022.

¹⁴ Id. at 82-83.

¹⁵ Id. at 45.

¹⁶ Id. at 88-107.

¹⁷ Id. at 41-51.

¹⁸ Id. at 51.

¹⁹ Id. at 60-66.

²⁰ Id. at 53-59.

Hence, the instant petition.

The Issue

The issue in the case is whether the CA erred in ruling that respondent is eligible *to apply* for probation.

The Court's Ruling

The petition is denied.

Petitioner maintains that respondent's conviction of the lesser offense under Section 12, Article II of RA 9165 is void because the plea bargain is not in accordance with the conditions stated in DOJ Circular No. 027. Thus, it concludes that the CA Order directing respondent to apply for probation is erroneous.²¹

The petitioner is grasping at straws.

Section 24, Article II of RA 9165 provides that any person *convicted for drug trafficking or pushing* under Section 5 of the law cannot avail of the benefits of the Probation Law, *viz.:*

Section 24. *Non-Applicability of the Probation Law for Drug Traffickers and Pushers.* — Any person convicted for drug trafficking or pushing under this Act, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended.

The RTC convicted respondent of the lesser offense of violation of Section 12, Article II of RA 9165, or *illegal possession of drug paraphernalia* after he pleaded guilty thereto in accordance with the Court's Plea Bargaining Framework in Drug Cases (A.M. No. 18-03-16-SC).²²

The Court finds that the CA correctly declared respondent eligible

²¹ Id. at 29-32.

²² Id. at 43.

to apply for probation after having been convicted of the lesser offense of *illegal possession of drug paraphernalia*, notwithstanding the fact that he was originally charged with *illegal sale of dangerous drugs*.

In *Pascua v. People*²³ (*Pascua*), the Court ruled that the prohibition from applying for probation mentioned in A.M. No. 18-03-16-SC does not apply to persons originally charged with violation of Section 5, Article II of RA 9165 but subsequently convicted of a lesser offense by reason of plea bargain. In *Pascua*, the Court emphasized that in applying for probation, what is essential is not the offense charged in the Information but rather the offense to which the accused is ultimately found guilty, thus:

It is clear from both Section 24, Article II of RA 9165 and the provisions of the Probation Law that in applying for probation, **what is essential is not the offense charged but the offense to which the accused is ultimately found guilty of.**

X X X X

Thus, regardless of what the original charge was in the Information, the judgment would be for the lesser offense to which the accused pled guilty. This means that the penalty to be meted out, as well as all the attendant accessory penalties, and other consequences under the law, including eligibility for probation and parole, would be based on such lesser offense. Necessarily, even if Pascua was originally charged with violation of Section 5, Article II of RA 9165 in Criminal Case No. 18805, he was ultimately convicted of the lower offense of violation of Section 12, Article II of the same law. Since the foregoing effectively removed Pascua's case from the coverage of Section 24, Article II of RA 9165, he should, at the very least, be allowed to apply for probation.²⁴ (Emphasis in the original)

Considering that respondent was convicted of violation of Section 12, Article II of RA 9165, the Court rules that he is entitled to apply for probation under A.M. No. 18-03-16-SC.

However, it must be stressed that this ruling does not, *per se*, make respondent eligible for probation. It is limited to the deletion of the RTC's pronouncement that respondent is ineligible to apply for probation, thereby allowing him to file an application for probation.²⁵ Thus, should respondent apply for probation, his application would still be subject to the trial court's sound discretion after due consideration of

²³ G.R. No. 250578, September 7, 2020.

²⁴ Id.

²⁵ Id.

the Probation Law.²⁶

Significantly, the DOJ issued Department Circular No. 018²⁷ (DOJ Circular No. 018) dated May 10, 2022 which effectively revoked DOJ Circular No. 027. In the recent DOJ Circular No. 018, where the subject of the illegal sale is *0.01 gram to .99 gram of shabu*, the accused may plea to the lesser offense of Illegal Possession of Drug Paraphernalia under Section 12, Article II of RA 9165. This is the same with the plea bargaining framework in A.M. No. 18-03-16-SC. In Criminal Case No. 20216, because respondent was charged with illegal sale of 0.066 gram of *shabu*, his plea to the lesser offense of illegal possession of drug paraphernalia is well within the conditions set forth in DOJ Circular No. 018 and A.M. No. 18-03-16-SC. Thus, the validity of respondent's conviction under Section 12, Article II of RA 9165 for illegal possession of drug paraphernalia is beyond question.

While the Court takes judicial notice of the efforts of the DOJ to amend DOJ Circular No. 027 to conform to the Court's framework for plea bargaining in drug cases as set forth in A.M. No. 18-03-16-SC, it bears emphasizing that plea bargaining in criminal cases is forthright a rule of procedure that falls within the Court's exclusive rule-making power as provided in Section 5(5),²⁸ Article VIII of the 1987 Constitution.²⁹

Thus, in the recent consolidated cases of *People v. Montierro*,³⁰ *Baldadera v. People*,³¹ and *Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions in G.R. No. 247575 and G.R. No. 250295*,³² the Court discerned a need to play its crucial role in checking and balancing the exercise of the powerful machinery of the State by setting forth the

²⁶ Id.

²⁷ Revised Amended Guidelines on Plea Bargaining for Republic Act No. 9165, Otherwise Known as the Comprehensive Dangerous Drugs Act of 2002.

²⁸ Section 5(5), Rule VIII of the 1987 Philippine Constitution provides:

Section 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 under-privileged. 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.

²⁹ See *Estipona v. Judge Lobrigo*, 816 Phil. 789 (2017).

³⁰ G.R. No. 254564, July 26, 2022.

³¹ G.R. No. 254974, July 26, 2022.

³² A.M. No. 21-07-16-SC, July 26, 2022.

following clarificatory guidelines for plea bargaining in drugs cases, viz.:

1. Offers for plea bargaining must be initiated in writing by way of a formal written motion filed by the accused in court.
2. The lesser offense which the accused proposes to plead guilty to must necessarily be included in the offense charged.
3. Upon receipt of the proposal for plea bargaining that is compliant with the provisions of the Plea Bargaining Framework in Drugs Cases, the judge shall order that a drug dependency assessment be administered. If the accused admits drug use, or denies it but is found positive after a drug dependency test, then he/she shall undergo treatment and rehabilitation for a period of not less than six (6) months. Said period shall be credited to his/her penalty and the period of his/her after-care and follow-up program if the penalty is still unserved. If the accused is found negative for drug use/dependency, then he/she will be released on time served, otherwise, he/she will serve his/her sentence in jail minus the counselling period at rehabilitation center.
4. As a rule, plea bargaining requires the mutual agreement of the parties and remains subject to the approval of the court. Regardless of the mutual agreement of the parties, the acceptance of the offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the court.
 - a. Though the prosecution and the defense may agree to enter into a plea bargain, it does not follow that the courts will automatically approve the proposal. Judges must still exercise sound discretion in granting or denying plea bargaining, taking into account the relevant circumstances, including the character of the accused.
5. The court shall not allow plea bargaining if the objection to the plea bargaining is valid and supported by evidence to the effect that:
 - a. the offender is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or
 - b. when the evidence of guilt is strong.
6. Plea bargaining in drugs cases shall not be allowed when the proposed plea bargain does not conform to the Court-issued Plea Bargaining Framework in Drugs Cases.
7. Judges may overrule the objection of the prosecution if it is based

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

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

9. If an accused applies for probation in offenses punishable under RA No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Section 24 thereof, then the law on probation shall apply.³³

Notably, respondent's offer for plea bargaining was made through an *oral* motion in open court during the hearing on November 15, 2019.

Under DOJ Circular No. 027, although already revoked by DOJ Circular No. 018, it is mandated that all offers for plea bargaining must be initiated in writing by way of a formal motion filed by the accused in court. On the other hand, DOJ Circular No. 018 requires that a plea bargaining proposal must be initiated by a formal motion filed by the accused in court. Furthermore, the Court's clarificatory guidelines, as aforequoted, likewise requires that offers for plea bargaining must be "initiated in writing by way of a formal written motion filed by the accused in court."

Notwithstanding the requirement that the plea bargaining offer must be in writing, the Court resolves to apply liberality in the instant case in view of the following factors: (1) late stage of the proceedings; (2) the failure of the public prosecutor to timely raise the issue before the lower court; (3) the fact that the defect is neither jurisdictional nor fatal to the case; (4) judicial economy and efficiency; and (5) the principle of speedy disposition of cases. The Court deems that a suspension of the strict adherence to procedural rules is warranted under the circumstances.

It is also worth mentioning that the aforesaid formal defect in the motion to allow respondent to enter into a plea bargaining agreement was not raised by the prosecution before his arraignment.³⁴

³³ Id.

³⁴ See *rollo*, p. 82.

Here, the public prosecutor rejected respondent's offer for plea bargaining only on the ground that based on DOJ Circular No. 027, the allowable plea bargain for violation of Section 5 of RA 9165 is Section 11 (Illegal Possession of Drugs) and not Section 12 (Illegal Possession of Drug Paraphernalia).³⁵ The prosecutor did not oppose the offer to plea bargain on the ground that the motion was *not in writing*.

In this regard, the Court underscores that a non-jurisdictional defect that merely refers to a procedural imperfection may be waived by the failure to seasonably raise it.³⁶ Thus, for failing to timely raise the formal defect in respondent's offer for plea bargaining, the prosecution is deemed to have waived any objection based on this ground.

It also bears stressing that the resolution of the motion to allow an accused to enter into plea bargaining agreement is subject to the sound discretion of the trial court.

In the case, respondent was allowed to enter a plea of guilty to illegal possession of drug paraphernalia under Section 12, Article II of RA 9165 because the amount of the drugs involved fall within the allowable quantity provided for by the rules.³⁷ Beside the fact that respondent's plea bargaining offer was not a formal written motion, the trial court found no grounds to reject it, *i.e.*, that respondent was a recidivist, a habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or that the evidence of his guilt is strong.

Be that as it may, the Court clarifies that the dispensation with the requirement that the plea bargaining offer must be in writing is applied *pro hac vice* in view of the several circumstances considered in the case.

The bench and the bar are reminded that strict compliance with the requirements under the clarifying guidelines for the plea bargaining in drug cases is enjoined.

³⁵ Id. at 81.

³⁶ See *Moreno v. Kahn*, 837 Phil. 337, 344 (2018), citing *Heirs of Dr. Mariano Favis, Sr. v. Gonzales*, 724 Phil. 465 (2014).

³⁷ *Rollo*, p. 82.

WHEREFORE, the petition is **DENIED**. The Decision dated June 28, 2021 and the Resolution dated March 10, 2022 of the Court of Appeals in CA-G.R. SP No. 164335 are **AFFIRMED *in toto***. Respondent Darwin Reyes y Cabornay is hereby given a period of fifteen (15) days from notice of this Decision within which to file his application for probation before the court *a quo*.

SO ORDERED.

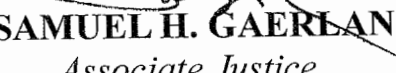


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

On official leave

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson



SAMUEL H. GAERLAN
Associate Justice




JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


HENRI JEAN PAUL B. INTING
Associate Justice
Acting Chairperson, Third Division
(Per S.O. No. 2918-REVISED dated October 12, 2022)

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice