



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

JONATHAN GABRIEL BIRON,
ARJAY MENDEZ, and ERIC
EBUENGA PALOMER,

Petitioners,

G.R. No. 258126

Present:

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

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

April 19, 2023

Misdebat

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RESOLUTION

SINGH, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision,² dated March 1, 2021, and the Resolution,³ dated October 26, 2021, of the Court of Appeals (CA) in CA-G.R. SP No. 163424. The CA reversed the Decisions,⁴ both dated June 28, 2019, and the Order,⁵ dated September 24, 2019 of Branch 15, Regional Trial Court, Fifth Judicial Region, Tabaco City (RTC) which allowed petitioners Jonathan Gabriel Biron (**Biron**), Arjay Mendez (**Mendez**), and Erick Ebuenga Palomer (**Palomer**) (collectively, the **petitioners**) to enter a plea of guilty to a lesser offense in Criminal Case Nos. T-7306, T-7307, and T-7308.

¹ *Rollo*, pp. 11-27.

² *Id.* at 38-51. Penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Pablito A. Perez and Raymond Reynold Reyes Lauigan.

³ *Id.* at 53-54.

⁴ *Id.* at 79-84. Penned by Presiding Judge Alben Casimiro Rabe.

⁵ *Id.* at 85-87.

The Facts

The petitioners were charged with violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165⁶ in three separate Informations, all dated November 11, 2018. Specifically, Biron was charged in Criminal Case Nos. T-7306 and T-7307 for violation of Sections 5 and 11 of RA 9165, respectively, while all petitioners were charged in Criminal Case No. T-7308 for violation of Section 5, RA 9165. The Informations read:

Crim. Case No. T-7306: [Violation of Biron]

That at about 5:05 o'clock in the afternoon of November 10, 2018, at Purok 1, San Ramon, [Tabaco City,] Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being legally authorized to sell and deliver any dangerous drug, then and there knowingly, willfully, and feloniously, sold for Php500.00 and delivered to PO2 Christian Romano of Tabaco City Police Station as the poseur-buyer, one (1) piece heat-sealed transparent plastic sachet marked as CBR1 containing 0.1015 gram of Methamphetamine Hydrochloride ("shabu"), knowing the same to be a dangerous drug, to the damage and prejudice of the public and government.

ACTS CONTRARY TO LAW.

Crim. Case No. T-7307: [Violation of Biron]

That at about 5:05 o'clock in the afternoon of November 10, 2018, at Purok 1, San Ramon, Tabaco City, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being legally authorized to possess any dangerous drug, did then and there knowingly, willfully, and feloniously, have in his possession, control, and custody, one (1) piece heat-sealed transparent [plastic sachet] marked as CBR2 containing 0.0738 gram of Methamphetamine Hydrochloride[,] commonly known as "shabu", a dangerous drug, ("shabu"), to the damage and prejudice of the public and government.

ACTS CONTRARY TO LAW.

Crim. Case No. T-7308: [Violation of all petitioners]

That at about 5:05 o'clock in the afternoon of November 10, 2018, at Purok 1, San Ramon, [Tabaco City,] Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused JONATHAN G. BIRON, not being legally authorized to sell and deliver any dangerous drug, then and there knowingly, willfully, and feloniously, sold for Php1,000.00 and delivered to co-accused ARJAY MENDEZ and ERIC E. PALOMER (as buyers)[,] acting in conspiracy with said accused JONATHAN G. BIRON, two (2) pieces heat-sealed transparent plastic sachet respectively marked as CBR3 and CBR5[,] respectively containing 0.0913 gram and 0.0855 gram of Methamphetamine Hydrochloride

⁶ Entitled "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," approved on January 23, 2002.



(“shabu”), knowing the same to be a dangerous drug, to the damage and prejudice of the public and government.

ACTS CONTRARY TO LAW.⁷

The petitioners pleaded not guilty to the charges and subsequently filed two motions to enter into a plea bargain and plead guilty to a lesser offense under Section 12, Article II of RA 9165, citing the Supreme Court Administrative Matter (A.M.) No. 18-03-16-SC or the “Adoption of the Plea-Bargaining Framework in Drugs Cases.”⁸

The Deputy City Prosecutor opposed the said motions and asserted that the rules require the concurrence or approval of the public prosecutor and the arresting officers in a plea to lesser charges under RA 9165.

The Ruling of the RTC

The RTC granted the motions and ordered the re-arraignment of the petitioners in its Orders, dated May 31, 2019. On June 21, 2019, the petitioners pleaded guilty to the lesser offense under Section 12 of RA 9165.⁹

Thereafter, the RTC found the petitioners guilty of the amended offense in its Decision, dated June 28, 2019:

Crim. Case Nos. T-7306 & T-7307:

WHEREFORE, foregoing premises considered, judgment is hereby rendered finding the accused JONATHAN GABRIEL BIRON guilty for:

1. Violation of Section 12 of RA 9165 (Possession of Equipment, Apparatus, and other Paraphernalia for Dangerous Drugs) and he is hereby meted an indeterminate penalty of two (2) years to four (4) years[,] and a fine of Ten Thousand Pesos (Php10,000.00) for Criminal case No. T-7306.
2. Violation of Section 12 of RA 9165 (Possession of Equipment, Apparatus, and other Paraphernalia for Dangerous Drugs) and he is hereby meted an indeterminate penalty of two (2) years to four (4) years[,] and a fine of Ten Thousand Pesos (Php10,000.00) for Criminal case No. T-7307.

Accordingly also, the accused is hereby ordered to: 1) voluntarily submit himself in Risk Assessment Program by the concerned Rural Health Office and to undergo appropriate program[,] such as General Intervention, Community[-]Based Rehabilitation, and/or After Care Program of the

⁷ *Rollo*, pp. 39-40, CA Decision.

⁸ *Id.* at 40, CA Decision.

⁹ *Id.*



Government; 2) support and cooperate with the Anti-Illegal Drug Campaign of the Philippine National Police (PNP), Philippine Drug Enforcement Agency (PDEA), Local Government Units (LGU)[,] and other concerned government agencies to suppress and eradicate the proliferation of Illegal Drugs in the community[,], and will also serve as a lecturer/resource speaker during symposia on the ill-effects of illegal drugs to the user as well as in the community; and, 3) not engage in any illegal activities[,], particularly illegal drug activities[,], and shall help and support the proper authorities in maintaining the peace and order in the community and in the Barangay where he is residing. The above-stated conditions shall be incorporated in the conditions for his probation and any violation thereof shall be a ground for the cancellation and revocation of his probation.

SO ORDERED.

Crim. Case Nos. T-7308:

WHEREFORE, foregoing premises considered, judgment is hereby rendered finding the accused JONATHAN GABRIEL BIRON, ARJAY MENDEZ and ERIC EBUENGA PALOMER guilty for Violation of Section 12 of RA 9165 (Possession of Equipment, Apparatus, and other Paraphernalia for Dangerous Drugs) and are hereby meted an indeterminate penalty of two (2) years to four (4) years[,], and a fine of Ten Thousand Pesos (Php10,000.00) each.

Accordingly also, the accused are hereby ordered to: 1) voluntarily submit himself in Risk Assessment Program by the concerned Rural Health Office and to undergo appropriate program[,], such as General Intervention, Community[-]Based Rehabilitation, and/or After Care Program of the Government; 2) support and cooperate with the Anti-Illegal Drug Campaign of the Philippine National Police (PNP), Philippine Drug Enforcement Agency (PDEA), Local Government Units (LGU)[,], and other concerned government agencies to suppress and eradicate the proliferation of Illegal Drugs in the community[,], and will also serve as a lecturer/resource speaker during symposia on the ill-effects of illegal drugs to the user as well as in the community; and, 3) not engage in any illegal activities[,], particularly illegal drug activities[,], and shall help and support the proper authorities in maintaining the peace and order in the community and in the Barangay where they are residing. The above-stated conditions shall be incorporated in the conditions for their probation and any violation thereof shall be a ground for the cancellation and revocation of their probation.


SO ORDERED.¹⁰

The prosecution moved to consolidate the cases and prayed for the reconsideration of the assailed Decisions. However, the RTC denied the same in an Order,¹¹ dated September 24, 2019:

Consequently, there exists no reason why the good prosecutor will move for the reconsideration of the aforesaid decision, it being laid as basis, the Supreme Court Administrative Circular which is above that of the

¹⁰ Id. at 41-42, CA Decision.

¹¹ Id. at 85-87.



Department of Justice circular[,] which from whence the good prosecutor is banking his opposition because the Administrative Matter issued by the Supreme Court is over and above the Administrative circular issued by the Department of Justice. The Supreme Court in promulgating said Administrative Circular is exercising its rule[-]making power in consonance with the provision under the Constitution that the Supreme Court shall have the authority to pass circular in conjunction with its rule[-]making power.

Consequently, without being repetitive, this Court is denying the motion for reconsideration filed by the prosecution.

SO ORDERED.¹²

Unperturbed, the respondent through the Office of the Solicitor General (**OSG**), filed a petition for *certiorari* under Rule 65 ascribing grave abuse of discretion amounting to lack or excess of jurisdiction against the RTC for granting the petitioners' plea-bargain and allowing them to plead guilty to a lesser offense despite the prosecution's vehement objection.

The OSG argued that *Estipona, Jr. v. Lobrigo (Estipona)*¹³ did not abandon the essence of plea bargaining which involves the prosecution and the accused to work out a mutually satisfactory disposition of the case. The OSG insists that absent a prior agreement between the prosecution and the accused, there is nothing for the court to approve.

Moreover, the OSG contended that Section 12 of RA 9165 cannot be considered a lesser offense as it is necessarily included in the offenses under Sections 5 and 11 under which the petitioners were criminally charged. Finally, the OSG stated that double jeopardy will not attach considering that the RTC acted with grave abuse of discretion in issuing the assailed decisions.

In response, the petitioners insisted that approval or denial of the motion rests upon the discretion of the trial court. Further, they opined that the strict adherence to the Department of Justice (**DOJ**) Circular on plea bargaining will result to a situation where no offer of plea-bargaining of charges under Section 5 of RA 9165, will ever be entertained. Furthermore, they maintained that the issuances of the RTC that allowed them to plea bargain was in conformity with AM No. 18-03-16-SC¹⁴ which allows plea bargaining to the lesser offense under Section 12 to those charged for violations of Sections 5 and 11 of RA 9165.

In its Reply, the OSG, citing *Sayre v. Xenos (Sayre)*,¹⁵ averred that the prosecution's objection against plea bargaining should be considered a

¹² Id. at 42-43, CA Decision.

¹³ 816 Phil. 789 (2017).

¹⁴ Adoption of the Plea Bargaining Framework in Drugs Cases, issued on April 10, 2018.

¹⁵ G.R. No. 244413, G.R. No. 244415-16, February 18, 2020, 932 SCRA 501, 537.



continuing objection on their part, and that the criminal case should proceed to trial.

The Ruling of the CA

The CA granted the petition in its Decision,¹⁶ dated March 1, 2021. The CA ruled that while *Estipona* allowed plea bargaining, it did not disregard altogether the requisites for plea bargaining as provided in Section 2, Rule 116 of the Rules of Court.

The CA cited the Court's 2020 ruling in *Sayre* on the requirements in pleading guilty to a lesser offense:

In the said case, the accused was charged for violation of Section 5 of RA 9165 and moved to plead guilty to a lesser offense of Section 12 of RA 9165 pursuant to AM No. 18-03-16-SC. For its part, the prosecution therein made a counter-proposal that the accused should plead guilty for the offense under Section 11, paragraph 3 of RA 9165 pursuant to DOJ Circular No. 2719. The trial court therein denied the motion of the accused. In sustaining the trial court, the Supreme Court categorically declared therein that a plea bargain still requires the mutual agreement of the parties and remains subject to the approval of the court. It treated the refusal of the prosecution to adopt the acceptable plea bargain under AM No. 18-03-16-SC as a continuing objection for its part which should be resolved by the trial court. It ratiocinated that because of the continuing objection by the prosecution, there was no mutual agreement that can be submitted for the court's approval. By so doing, the Supreme Court harmonized its rule-making authority vis-à-vis the DOJ Circular No. 27 such that the latter merely serves as guidelines for prosecutors to observe before giving their consent to a proposed plea bargain.¹⁷ (Citations omitted)


The CA likewise held:

Anent petitioner's argument that the elements of the lesser offense under Section 12 of RA 9165 are totally different from the elements of the offenses under Sections 5 and 11, RA 9165, it must be emphasized that the rules merely require the presence of some essential elements or ingredients for two offenses to be considered as either one necessarily includes or is necessarily included in the other. Thus, it has been construed that "[a]n offense may be said to necessarily include another when some of the essential offense elements or ingredients of the former constitute the latter. And vice versa, an offense may be said to be necessarily included in another when the essential ingredients of the former constitute or form part of those constituting the latter."¹⁸ (Citations omitted)

¹⁶ *Rollo*, pp. 38-51.

¹⁷ *Id.* at 48.

¹⁸ *Id.* at 49.



The CA ruled that the RTC committed grave abuse of discretion amounting to lack of jurisdiction when it allowed the petitioners to plea-bargain and plead to a lesser offense despite the prosecution's objection. A decision rendered with grave abuse of discretion amounts to lack of jurisdiction, which in turn, prevents double jeopardy from attaching.

The petitioners sought for a reconsideration, which the CA denied in its Resolution, dated October 26, 2021.

Aggrieved, the petitioners filed the present Petition averring that the CA erred in requiring the prosecution's consent in plea-bargaining despite the approval of the RTC.¹⁹ The petitioners allege that requiring the consent of the prosecution in plea bargaining in drugs cases defeats the purpose of the rule allowing the same.²⁰

The Issue

Did the CA err in reversing the RTC's Decision that granted the petitioners plea bargain despite the prosecution's objection?

The Ruling of the Court

The ultimate legal issue in this case is whether a trial court has the authority to allow plea bargaining notwithstanding the prosecution's continuing objection thereto. This question has been resolved by the Court in the consolidated cases of *People v. Montierro (Montierro)*.²¹ While the *ponente* dissented in *Montierro* with the view that the consent of the prosecution is indispensable in plea bargaining, the *ponente* bows to the doctrine adopted by the Court *En Banc* in *Montierro*.

The Court rules that the RTC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when it allowed the plea bargain in this case.

In *Montierro*, the Court *En Banc* held that courts may overrule the objection of the prosecution and approve the plea bargaining proposal when the objection is not supported by the evidence on record or is solely anchored

¹⁹ Id. at 20-21.

²⁰ Id. at 23-25.

²¹ *People v. Montierro*, G.R. No. 254564, *Baldadera v. People*, G.R. No. 254974, A.M. No. 21-07-16-SC – 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, 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, July 26, 2022.



on an internal rule or guideline of the DOJ that is inconsistent with the Court's Plea Bargaining Framework in Drugs Cases, thus:

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.²²

Here, the RTC anchored its ruling on A.M. No. 18-03-16-SC where the quantity of the suspected illicit drugs was within the allowable amounts accepted as subject of the plea bargaining agreement:

In ruling upon the motion for reconsideration, the Court once again is citing Supreme Court *en banc* resolution issued Administrative Matter No. 18-03-16-SC (Adoption of the Plea-Bargaining Framework in Drug Cases). Said Administrative Matter allows the accused to enter into a plea-bargaining agreement with respect to Section 5 Article 11 of Republic Act 9165, as long as it is methamphetamine hydrochloride or “shabu” and the quantity is 0.01 gram to 0.99 grams and the plea-bargaining allowed is under Sec. 12 of Art. 11 of R.A. 9165.²³

The RTC likewise premised its ruling on the petitioners’ desire to avail of the benefit of the provisions of the Probation Law and be given another chance to live a clean, peaceful, crime-free and drug-free life, and undertaking to cooperate and abide by whatever obligations are imposed by the Court.

The OSG, in its Petition for *Certiorari* with the CA, argued that the RTC promulgated the assailed Decisions without giving the prosecution an opportunity to present evidence as its objection to the petitioners’ prayer to plead guilty to a lesser offense.

Verily, following the *Montierro* guidelines, the Court finds it proper to remand the case to the court of origin to determine if the prosecution’s objection is supported by evidence to the effect that: (1) the petitioners are recidivists, habitual offenders, known in the community as drug addicts and troublemakers, have undergone rehabilitation but had a relapse, or have been charged many times; or (2) the evidence of guilt is strong.

WHEREFORE, the Petition is **GRANTED**. The Decision, dated March 1, 2021, and the Resolution, dated October 26, 2021, of the Court of Appeals in CA-G.R. SP No. 163424 are **SET ASIDE**.

The respective cases of Jonathan Gabriel Biron, Arjay Mendez, and Erick Ebuenga Palomer in Criminal Case Nos. T-7306, T-7307, and T-7308, are **REMANDED** to Branch 15, Regional Trial Court, Fifth Judicial Region,

²² Id.

²³ *Rollo*, p. 85, RTC Decision.



Tabaco City to determine whether: (1) the petitioners are recidivists, habitual offenders, known in the community as drug addicts and troublemakers, have undergone rehabilitation but had a relapse, or have been charged many times; or (2) the evidence of guilt is strong.


Furthermore, Biron, Mendez, and Palomer are **ORDERED** to submit to a drug dependency test pursuant to A.M. No. 18-03-16-SC.


SO ORDERED.



MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

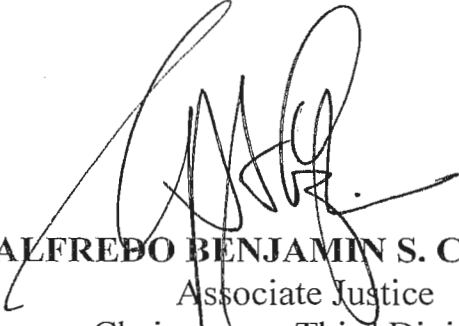

HENRI JEAN PAUL B. INTING
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

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



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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

