

SECOND DIVISION

[G.R. No. 250578, September 07, 2020]

BERT PASCUA Y VALDEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated September 13, 2019 and the Resolution^[3] dated November 21, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 160653 which upheld the Orders dated January 29, 2019^[4] and February 26, 2019^[5] of the Regional Trial Court of Balanga City, Bataan, Branch 1 (RTC) in Criminal Case No. 18805, allowing petitioner Bert Pascua y Valdez (Pascua) to enter a plea of guilty for violation of Section 12, Article II of Republic Act No. (RA) 9165,^[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," but declared him "ineligible to apply for probation."^[7]

The Facts

The instant case stemmed from two (2) Informations^[8] filed before the RTC, docketed as Criminal Case Nos. 18805 and 18806, respectively charging Pascua with violations of Sections 5 and 11, Article II of RA 9165 for selling 0.024 gram and possessing 0.054 gram of *methamphetamine hydrochloride*, or *shabu*.^[9] Upon arraignment, Pascua pleaded "not guilty" to the crimes charged. However, he later filed a **Motion to Allow Accused to Enter into Plea Bargaining Agreement** wherein he offered to enter a plea of "guilty" to the lesser offense of **violation of Section 12,^[10] Article II of RA 9165** for both criminal cases.^[11] The prosecution filed its Comment and Opposition thereto, stressing that, per Department of Justice Department Circular No. 027-18,^[12] the State's consent is necessary before the accused can plead to a lesser offense.^[13]

The RTC Ruling

On January 29, 2019, the RTC issued separate Orders^[14] allowing Pascua to enter a plea of guilty to the lesser offense of violation of Section 12, Article II of RA 9165 in both Criminal Case Nos. 18805 and 18806. However, it was expressly stated in the dispositive portion of the Order pertaining to Criminal Case No. 18805 that Pascua was "ineligible to apply for probation."^[15]

Accordingly, Pascua applied for probation as regards Criminal Case No. 18806, which the RTC acted upon issuing an Order^[16] dated February 26, 2019 which, among

others, directed the Bataan Parole and Probation Officer to conduct an investigation on Pascua in accordance with Sections 5 and 7 of Presidential Decree No. 968,^[17] as amended,^[18] otherwise known as the "Probation Law of 1976" (Probation Law).

On the other hand, Pascua moved for reconsideration^[19] as to the Order made in Criminal Case No. 18805, particularly for declaring him ineligible for probation. He argued that A.M. No. 18-03-16-SC^[20] only prohibits probation if the accused is actually found **guilty** of sale of illegal drugs (Section 5), and not when he is found guilty to the lesser offense of "possession of equipment, instrument, apparatus, and other paraphernalia for dangerous drugs" (Section 12).^[21]

In an Order^[22] dated February 26, 2019, the RTC issued an Order denying the motion for reconsideration for lack of merit. The RTC held that probation is not a matter of right but a special privilege which is discretionary upon the court.^[23] It held that the framers of A.M. No. 18-03-16-SC clearly intended that persons charged with sale of illegal drugs would not be qualified for probation if they choose to plead guilty to a lesser offense.^[24]

Aggrieved, Pascua filed a petition for *certiorari*^[25] with the CA.

The CA Ruling

In a Decision^[26] dated September 13, 2019, the CA affirmed the RTC ruling. The CA held that a reasonable interpretation of A.M. No. 18-03-16-SC would lead to the conclusion that the Supreme Court intended for drug trafficking and pushing (Section 5) to still be covered by the "no probation rule" under Section 24, Article II of RA 9165.^[27] It rejected Pascua's contention that A.M. No. 18-03-16-SC should apply to the lesser offense allowed instead of the offense actually charged.^[28] The CA opined in this wise: "[t]his interpretation will result to absurdity, since Section 5 is not among the enumerated lesser offenses to which an accused can admit guilt to in lieu of being convicted of a higher offense. If this was really the intention of the Supreme Court, it would not have included this provision since there is no acceptable plea to which this exception to the general rule would be applicable. It is therefore rational and logical to conclude that persons charged [with] violating Section 5 who subsequently avail of plea bargaining may not apply for probation[,] x x x it would mean that every person accused of sale of illegal drugs would simply have to plead guilty to the lesser offense of violation of Section 12, apply for probation, then be released scot-free."^[29] It likewise held that even assuming Pascua was eligible for probation, the same is still within the discretion of the lower court.^[30]

Pascua moved for reconsideration^[31] but was denied in a Resolution^[32] dated November 21, 2019; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly ruled that

the RTC did not gravely abuse its discretion in holding that Pascua is ineligible for probation in Criminal Case No. 18805 after pleading guilty to the lesser offense of violation of Section 12, Article II of RA 9165.

The Court's Ruling

The petition has partial merit.

"[G]rave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."^[33] In this regard, case law instructs that there is grave abuse of discretion when an act: (a) is done contrary to the Constitution, the law or jurisprudence, or executed whimsically, capriciously or arbitrarily, out of malice, ill will, or personal bias; or (b) manifestly disregards basic rules or procedures.^[34]

Guided by the foregoing considerations and as will be explained hereunder, the Court finds that the CA erred in finding no grave abuse of discretion on the part of the RTC in declaring Pascua ineligible for probation after pleading guilty to the lesser offense of violation of Section 12, Article II of RA 9165.

To recall, plea bargaining in cases involving drugs cases was recently allowed through the Court's promulgation of *Estipona, Jr. v. Lobrigo*,^[35] which declared the provision in RA 9165 expressly disallowing plea bargaining in drugs cases, *i.e.*, Section 23,^[36] Article II, unconstitutional for contravening the rule-making authority of the Supreme Court. Following this pronouncement, the Court issued A.M. No. 18-03-16-SC providing for a plea bargaining framework in drugs cases, which was required to be adopted by all trial courts handling drugs cases.^[37]

In A.M. No. 18-03-16-SC, the Court enumerated, in table format, several violations of RA 9165 which could be subject to plea-bargaining.^[38] Included therein is violation of Section 5, Article II thereof, particularly for the sale, trading, *etc.* of *shabu* **weighing less than 1.00 gram**. The rationale for this particular exception was explained by the Court in its Resolution dated April 2, 2019 in *Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*,^[39] to wit:

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. (Emphases and underscoring supplied)

A.M. No. 18-03-16-SC also provides, among others, in the "Remarks" column of the aforesaid offense that "if accused applies for probation in offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to [Section] 24 thereof, then the law on probation apply."^[40] Notably, 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.

In this case, the CA construed the aforementioned remark in A.M. No. 18-03-16-SC as disqualifying persons originally charged with violation of Section 5, Article II of RA 9165 but were convicted of the lesser offense of violation of Section 12, Article II of the same law – such as Pascua – from applying for probation.

However, the CA is mistaken as the said remark should be simply regarded as a recognition and reminder of the general rule provided in Section 24 that "[a]ny person **convicted for drug trafficking or pushing** under this Act"^[41] shall be ineligible for probation. Moreover, the CA's view is not supported neither by the very wording of Section 24, Article II of RA 9165 nor the provisions of the Probation Law. It likewise disregards the legal consequences of plea bargaining.

It bears stressing that it is only after the trial court arrives at a judgment of conviction can the provisions of the Probation Law apply. "Probation" is defined under Section 3 (a) thereof as "a disposition under which a defendant, **after conviction and sentence**, is released subject to conditions imposed by the court and to the supervision of a probation officer."^[42] Section 9 thereof, which lists the disqualified offenders, also highlights that the disqualifications pertain to the **nature** of the convictions meted out to the prospective applicant:

Section 9. Disqualified Offenders. — The benefits of this Decree shall not be extended to those: