

SECOND DIVISION

[G.R. No. 249459, June 14, 2021]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. NOEL SABATER
Y ULAN, RESPONDENT.**

DECISION

LAZARO-JAVIER, J.:

The Case

Petitioner People of the Philippines, through the Office of the Solicitor General (OSG), seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP. No. 158342:

1. Resolution^[1] dated January 28, 2019 dismissing the petition for late filing; and
2. Resolution^[2] dated September 17, 2019 denying reconsideration.

Antecedents

Under Information^[3] dated December 19, 2016, the Naga City Prosecutor's Office charged respondent Noel Sabater y Ulan with violation of Section 5, Republic Act No. (RA) 9165, thus:

That on November 4, 2016, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and criminally sell, dispense and deliver to poseur-buyer PO1 Reimon Joy N. Paaño one (1) pc. small heat-sealed transparent sachet with markings RJNPAN 11/04/16, weighing 0.049 gram, containing white crystalline substance which when tested, was found positive for the presence of Methamphetamine Hydrochloride popularly known as "shabu", a dangerous drug, in violation of the above-cited law.

ACTS CONTRARY TO LAW.

The case was raffled to the Regional Trial Court-Br. 24, Naga City as Criminal Case No. 2016-0935. On arraignment, respondent pleaded not guilty. Thereafter, trial ensued.^[4]

Approximately five (5) months after the prosecution had formally offered its evidence, respondent, on June 28, 2018 filed a motion for plea bargaining, proposing to plead *guilty* to a lesser offense, *i.e.* violation of Section 12, RA 9165 for *possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs*, citing AM. No. 18-03-16-SC entitled *Adoption of the Plea*

The prosecution opposed, citing DOJ Circular No. 027 dated June 26, 2018. It provides that when an accused is charged with selling less than five (5) grams of shabu in violation of Section 5, RA 9165, as here, he or she may plead guilty to the lesser offense of illegal possession of dangerous drugs under Section 11(3) of RA 9165, but not under Section 12 of the same law.^[6]

The Ruling of the Trial Court

By Order^[7] dated August 2, 2018, the trial court granted respondent's motion, nullifying DOJ Circular No. 027 in the process, thus:

WHEREFORE, the Motion is GRANTED. This Court declares that DOJ Circular 27 is contrary to the Rules of Court, and encroachment on the Rule-Making Power of the Supreme Court of the Philippines. The Opposition has no valid factual and legal basis. Plea bargaining is allowed in these cases.

SO ORDERED.^[8]

Hence, respondent's not guilty plea was vacated and he was rearraigned. This time, respondent pleaded *guilty* to violation of Section 12, RA 9165.^[9]

As borne in its Judgment^[10] dated September 12, 2018, the trial court rendered a verdict of conviction against respondent for violation of Section 12, RA 9165, *viz.*:

WHEREFORE, judgment is hereby rendered finding the accused NOEL SABATER y ULAN, GUILTY beyond reasonable doubt of the offense under Section 12, Article II of R.A. 9165.

Applying the Indeterminate Sentence Law, the accused is hereby sentenced to suffer imprisonment of six months and one day as minimum to four (4) years as maximum. He is further ordered to pay a fine of Fifty Thousand Pesos (Php50,000.00). He is further directed to submit himself to a drug dependency test. If he admits drug use, or deny it but is found positive after the drug dependency test, he shall undergo treatment and rehabilitation for a period of not less than 6 months.

In the service of his sentence, the accused shall be credited with the period of his preventive detention pursuant to Article 29 of the Revised Penal Code, as amended.

SO ORDERED.^[11]

The Ruling of the Court of Appeals

Aggrieved, the People elevated the case to the Court of Appeals via *certiorari*, docketed as CA-G.R. SP. No. 158342. But by Resolution^[12] dated January 28, 2019, the Court of Appeals dismissed the petition for late filing. It found that prosecution received the trial court's Order dated August 2, 2018 six (6) days later on August 8,

2018. Thus, it had sixty (60) days therefrom or until October 9, 2018 to file a petition for *certiorari*. As it was, the OSG filed its recourse on November 13, 2018 only or thirty five (35) days late.^[13]

The Court of Appeals denied reconsideration on September 17, 2019.^[14]

The Present Petition

The People now prays anew that respondent's plea to a lesser offense of violation of Section 12, RA 9165 be set aside, and the case, remanded to the trial court for further proceedings.^[15] It faults the Court of Appeals for ruling that its petition for *certiorari* was filed out of time. It brings to fore the fact that government functions in a bureaucracy and certain procedures had to be observed before they may elevate a case to a higher court.^[16] It is because they followed procedure that the OSG only received copy of the trial court's Order dated August 2, 2018 on November 8, 2018, after the lapse of the sixty day period for filing a petition for *certiorari*.^[17] The People, thus, prays that it be accorded leniency as regards the period for filing its recourse before the Court of Appeals.

The People likewise argues that the Court of Appeals should have resolved the case on the merits, rather than focusing on mere technicalities.^[18] On the merits, the People faults the Court of Appeals for effectively sustaining respondent's plea bargaining proposal despite the apparent lack of consent and over the vigorous opposition of the prosecutor. It asserts that while the landmark case of ***Estipona v. Hon. Lobrigo***^[19] allowed plea bargaining in drug cases, it did not deviate from the consensual nature and essence of plea bargaining.^[20] Thus, when the trial court granted respondent's motion for plea bargaining despite the prosecution's objection, the trial court effectively encroached upon the government's prerogative to prosecute crimes.^[21]

At any rate, the trial court gravely abused its discretion when it allowed respondent to plead to a lesser offense which is not necessarily included in the offense originally charged.^[22]

Too, the trial court gravely abused its discretion when it declared DOJ Circular No. 027 contrary to the Rules of Court and an encroachment into the rule-making power of the Court. Instead of choosing between DOJ Circular No. 27 and A.M. No. 18-03-16-SC, the trial court should have harmonized these issuances.^[23]

In his comment,^[24] respondent notes that the People has repeatedly acknowledged its belated filing of its petition for *certiorari* before the Court of Appeals without offering cogent justification for the lapse. He also notes that the People did not move for reconsideration of the trial court's Order dated August 2, 2018, a condition *sine qua non* for filing a petition for *certiorari*.

In any event, courts have authority to overrule the prosecution's objections in plea bargaining, especially so when strict adherence to DOJ Circular No. 027 would defeat the principle behind the Court's ruling in ***Estipona*** which nullified the "no-plea bargaining" provision of RA 9165. A contrary view is tantamount to a surrender

of the court's sole and supreme authority to command the course of the case.

Besides, there is wisdom in allowing the accused in drugs cases to plea bargain to the lesser offense of violation of Section 12, RA 9165 from Section 5 of the same law where the quantity of drugs involved is miniscule: 1) to provide a platform for rehabilitation of small-time drug offenders; 2) to curb police operatives' nefarious practice of utilizing buy-bust as a tool for abuse; and 3) to unclog our courts and focus the government's resources to the real bane of society.

Finally, ***Pascua v. People***^[25] already resolved whether an accused charged with violation of Section 5, RA 9165 may plea bargain to the lesser offense of violation of Section 12 of the same law.

Threshold Issues

I

Did the Court of Appeals commit reversible error when it dismissed the People's petition for *certiorari* for belated filing?

II

Did the trial court commit grave abuse of discretion when it granted respondent's proposal to plead guilty to the lesser offense of violation of Section 12, RA 9165 without the consent and over the objection of the prosecutor?

III

Did the trial court commit grave abuse of discretion when it declared DOJ Circular No. 027 an encroachment of the Court's rule-making power?

Ruling

We grant the petition.

The Court of Appeals committed reversible error when it declared that the petition for *certiorari* was filed out of time

Section 4, Ru1e 65 of the Rules of Court decrees:

Section 4. *When and where petition filed.* - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period

shall be counted from notice of the denial of said motion.

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No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

To recall, the sole reason for the dismissal of CA-G.R. SP. No. 158342 was its supposed belated filing. According to the Court of Appeals, the 60- day period under Section 4, Rule 65 is reckoned from the prosecution's receipt of the trial court's Order dated August 2, 2018 granting respondent's motion for plea bargaining. Thus, the petition was filed thirty five (35) days late on November 13, 2018.

But contrary to the Court of Appeals' ruling as well as the allegations of respondent and even the OSG, the 60-day reglementary period should have been counted from the prosecution's receipt of the trial court's Judgment dated September 12, 2018, rather than the Order dated August 2, 2018. ***People v. Majingcar***^[26] elucidates:

Under Rule 65 of the Rules of Court, a petition for certiorari must be filed within sixty (60) days from notice of the judgment, order, or resolution sought to be assailed. Here, the People claims that it reckoned the sixty (60) day period from September 18, 2018 when the prosecutor received a copy of the trial court's judgment of conviction that was rendered on the same day. Remarkably, neither respondents nor the Court of Appeals disagrees that indeed, on September 18, 2018, the trial rendered the assailed judgment and it was on the same day, too, when the prosecutor had notice thereof. It follows, therefore, that starting from September 18, 2018, the sixty day period expired on November 17, 2018. So when the People filed its petition for certiorari on November 16, 2018, it did so well within the reglementary period.

At any rate, the Court of Appeals clearly had its way of counting the sixty days. Although it did not mention from what date it started counting, logic dictates that it started counting on September 5, 2018, when respondents were re-arraigned and allowed to plead "guilty" to the lesser offense of violation of Section 12, Article II of RA 9165 in Criminal Case Nos. 2016-0774 and 2016-0775. We arrive at this conclusion because the Court of Appeals referred to November 4, 2018 as the last day for filing the petition for certiorari. Counting backward, the Court of Appeals appears to have started counting from September 5, 2018, the date when respondents got re-arraigned and pleaded guilty to the lesser offense of violation of Section 12, Article II of RA 9165 in both Crim. Case Nos. 2016-0774 and 2016-0775.

But this counting is erroneous. For it was still much later, on September 18, 2018, when the prosecutor actually had notice of the trial court's judgment of conviction that was rendered on the same day. Hence, the People correctly reckoned the sixty day period from September 18, 2018 or until November 17, 2018. Therefore, we repeat that when the People subsequently filed its petition for certiorari on November 16, 2018, it was well within the reglementary period.