

EN BANC

[A.M. No. P-10-2793 (Formerly A.M. OCA IPI No. 06-2406-P), March 08, 2016]

SIMPLECIO A. MARSADA, COMPLAINANT, VS. ROMEO M. MONTEROSO, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 34, CABADBARAN, AGUSAN DEL NORTE, RESPONDENT.

DECISION

BERSAMIN, J.:

A sheriff should enforce a writ of execution strictly according to its terms and in the manner provided in the *Rules of Court*. He is administratively liable if he deliberately contravenes the terms thereof, like having the judgment creditor accept an amount less than that stated in the writ of execution as the full and entire satisfaction thereof.

Antecedents

This administrative matter stemmed from the complaint for misconduct and dishonesty dated January 15, 2006^[1] lodged by Simplecio A. Marsada, a winning litigant, against respondent Romeo M. Monteroso in his capacity as Sheriff IV of Branch 34 of the Regional Trial Court (RTC) in Cabadbaran, Agusan del Norte in relation to the latter's conduct in the service of the writ of execution issued under the judgment rendered in Civil Case No. 4658 entitled *Simplecio A. Marsada v. Rolando Ramilo*, an action for the collection of a monetary obligation.^[2]

On October 23, 2001, Presiding Judge Orlando F. Doyon of Branch 34 of the RTC rendered judgment in Civil Case No. 4658 in favor of Marsada, the dispositive portion of which reads:

WHEREFORE, in the light of all the foregoing judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the defendant to pay plaintiff the amount of P151,708.30 representing the unpaid obligation to defendant plus 6% interest per annum reckoned from the date of filing of the complaint and 12% per annum if the amount adjudged remains unpaid, attorney's fees of P35,000.00, litigation expenses in the amount of P5,000.00 and costs.^[3]

On July 12, 2002, Judge Doyon issued the writ of execution only "as far as the amount of P35,000.00 is concerned."^[4] After the appeal of the defendant did not prosper for failure to file the appellant's brief in the Court of Appeals within the reglementary period, Marsada sought the implementation of the writ of execution by Monteroso. Ultimately, however, Monteroso delivered only P25,000.00 to Marsada, but he requested the latter to sign a prepared typewritten acknowledgment receipt indicating that he received the amount of P25,000.00 as "FULL AND ENTIRE

SATISFACTION"^[5] of the defendant's obligation.

Marsada later asked Monteroso for the balance, but the latter informed him that the defendant no longer had any property or money with which to fully satisfy the judgment. Thus, Marsada went to see Judge Doyon to seek another writ of execution for the full satisfaction of the judgment, showing the receipt he had signed at Monteroso's request. At this, Judge Doyon blamed Marsada for signing the receipt as the full and entire satisfaction of the judgment debt.

Based on the foregoing circumstances, Marsada brought his administrative complaint against Monteroso.

In its Memorandum dated March 15, 2010,^[6] the Office of the Court Administrator (OCA) recommended that the administrative complaint be re-docketed as an administrative matter, and be referred to the Executive Judge of the RTC in Cabadbaran, Agusan del Norte for investigation, report and recommendation. It observed that the culpability of Monteroso must be clearly established because this administrative charge, which would be his third offense, could warrant the forfeiture of his retirement benefits by virtue of his having meanwhile retired from the service.

It is relevant to mention that Monteroso was previously suspended from office for one year in *Beltran v. Monteroso* (A.M. No. P-06-2237, December 4, 2008), and for six months in *Cebrian v. Monteroso* (A.M. No. P-08-2461, April 23, 2008).

Report and Recommendation of the Investigating Judge

On January 20, 2012, Investigating RTC Judge Edgar G. Manilag found Monteroso guilty of misconduct for presenting to Marsada the prepared typewritten acknowledgment receipt indicating the amount of P25,000.00 written thereon as the "FULL AND ENTIRE SATISFACTION" despite the total amount stated in the writ of execution being P35,000.00. Judge Manilag observed that it was not for Monteroso as the sheriff to treat and consider the payment of P25,000.00 as the full satisfaction of the writ of execution despite the payment being insufficient. But Judge Manilag pointed out that the lack of substantial evidence to support the elements of corruption, or to show the clear intent to violate the law, or to establish the flagrant disregard of established rule rendered the transgression of Monteroso only as simple, not grave, misconduct.^[7]

Accordingly, Judge Manilag recommended as follows:

The Revised Uniform Rules on Administrative Cases in the Civil Service classifies simple misconduct as a less grave offense. Under Section 52 (B)(2), Rule IV of the Civil Service Rules, the commission of simple misconduct is penalized by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. Considering that the respondent already retired from the service effective December 7, 2007, the penalty of suspension or dismissal could no longer be imposed. The record shows that respondent was earlier suspended from office for one (1) year in *Beltran vs. Monteroso* (A.M. No. P-06-2237, December 4, 2008) and for six (6) months in *Cebrian vs. Monteroso* (A.M. No. P-08-2461, April 23, 2008).

WHEREFORE, it is respectfully recommended that a fine in the amount of Ten Thousand (P10,000.00) Pesos be imposed upon the respondent.^[8]

Evaluation and Recommendations of the OCA

In its Memorandum dated October 1, 2014,^[9] the OCA rendered its evaluation and recommendation against Monteroso as follows:

After a careful review of the Report, this Office finds the recommendation of the Investigating Judge Manilag to be supported by the evidence on record.

x x x x

Under the circumstances obtaining, this Office agrees with investigating Judge Manilag that the act of respondent Sheriff Monteroso in issuing the typewritten acknowledgment receipt as "full and entire satisfaction" of the Writ of Execution dated 12 July 2002 for P35,750.00 constitutes misconduct as he exceeded his authority in the enforcement of the Writ of Execution. It is not for respondent Sheriff Monteroso to determine whether the payment made, although insufficient, amounted to a full satisfaction of the judgment debt, upon his belief in good faith that defendant Ramilo is incapable of complying with his obligation. Thus, respondent Sheriff Monteroso's contention that the amount of P25,000.00 was all that defendant Ramilo could offer is not a valid justification to consider the same as fully paid.

As a sheriff and officer of the court charged with the dispensation of justice, respondent Sheriff Monteroso's conduct and behavior is circumscribed with the heavy burden of responsibility. By the very nature of his functions, respondent Sheriff Monteroso is called upon to discharge his duties with care and utmost diligence and, above all, to be above suspicion. Rather than plainly stating that the sum of P25,000.00 was only partial payment of the obligation pursuant to the Writ of Execution, respondent Sheriff Monteroso exceeded his authority by making it appear that it was already full and complete payment.^[10]

To the OCA, Monteroso was liable for simple misconduct, but considering that he had meanwhile retired from the service on December 7, 2007, the penalty of dismissal from the service could no longer be meted on him; hence, he should be fined P10,000.00, the same to be deducted by the Finance Management Office from his accrued leave credits, if any.^[11]

Ruling of the Court

We declare the findings of the OCA to be in accord with the evidence on record, and consider its recommendation of the penalty to be in consonance with jurisprudence.

The writ of execution should mirror the judgment that it enforces. The form and contents of the writ of execution are specified in Section 8, Rule 39 of the *Rules of Court*, viz.:

Section 8. *Issuance, form and contents of a writ of execution.* — The writ of execution shall: (1) issue in the name of the Republic of the Philippines from the court which granted the motion; (2) state the name of the court, the case number and title, the dispositive part of the subject judgment or order; and (3) **require the sheriff or other proper officer to whom it is directed to enforce the writ according to its terms, in the manner herein after provided:**

(a) If the execution be against the property of the judgment obligor, to satisfy the judgment, with interest, out of the real or personal property of such judgment obligor;

(b) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants, or trustees of the judgment obligor, to satisfy the judgment, with interest, out of such properties;

(c) If it be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment, the material parts of which shall be recited in the writ of execution;

(d) If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, describing it, to the party entitled thereto, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property of the person against whom it was rendered, and if sufficient personal property cannot be found, then out of the real property; and

(e) In all cases, the writ of execution shall specifically state the amount of the interest, costs, damages, rents, or profits due as of the date of the issuance of the writ, aside from the principal obligation under the judgment. For this purpose, the motion for execution shall specify the amounts of the foregoing reliefs sought by the movant. (8a) (Emphasis added)

Under this provision of the *Rules of Court*, Monteroso could enforce the writ of execution only "according to its terms, in the manner herein after provided." However, he was remiss in his duty to enforce the writ by collecting only P25,000.00. Even assuming that he had only been successful in collecting P25,000.00 from the defendant, he still exceeded his authority in requesting Marsada to sign the typewritten acknowledgment receipt reflecting the P25,000.00 as the full and complete satisfaction of the writ of execution. He had neither basis nor reason to have Marsada sign the receipt in that tenor because the text and tenor of the writ of execution expressly required the recovery of P35,000.00 from the losing party.

Also, Marsada claimed that Monteroso had represented to him that the defendant could no longer pay the balance. The representation, even if true, did not justify Monteroso's unilateral decision to discontinue the effort to recover the balance. It clearly devolved upon him as the sheriff to levy upon the execution debtor's properties, if any, as well as to garnish the debts due to the latter and the credits belonging to the latter. The duty to exhaust all efforts to recover the balance was