

THIRD DIVISION

[**A.M. No. P-16-3437 [Formerly OCA IPI No. 11-3665-P], April 20, 2016**]

PROSECUTOR III LEO C. TABAO, PETITIONER, VS. SHERIFF IV JOSE P. CABCABIN, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, TACLOBAN CITY, RESPONDENT.

DECISION

PERALTA, J.:

This administrative matter stems from the letter-complaint dated 11 April 2011 filed by Deputy Prosecutor Leo C. Tabao, accusing Sheriff IV Jose P. Cabcabin of the Office of the Clerk of Court of the Regional Trial Court of Tacloban City of Abuse of Authority and Gross Irregularity in the Performance of Duties relative to Criminal Case Nos. 2009-11-537 (Violation of Section 5^[1], R.A. 7610^[2]), 2009-11-538 (Violation of Sec. 6^[3], R.A. 9208^[4]) and 2009-11-539 (Violation of Sec. 4 (a)^[5] and (e)^[6], R.A. 9208), all entitled "*People of the Philippines vs. Danilo Miralles y Aguirre, et al.*"

The antecedent facts are as follows:

On January 8, 2010, the Office of the City Prosecution of Tacloban City filed the aforesaid three (3) criminal cases before the Regional Trial Court (RTC) of said city and they were raffled off to Branch 7, presided by Judge Crisologo S. Bitas.^[7]

On February 2, 2011, after the prosecution had presented its witnesses, Judge Bitas issued an Order^[8] finding probable cause to hold Danilo Miralles for trial for violation of Section 4 (a) and (e) of Republic Act (RA) No. 9208, and directing him to put up a bailbond of Forty Thousand Pesos (P40,000.00) for each of the 3 criminal cases.

On February 4, 2011, Sheriff Cabcabin issued a Certification^[9] to the effect that Miralles has voluntarily surrendered himself to the former to avail of his right to bail for his temporary liberty in connection with the said 3 cases before the RTC, Branch 7. On the same day, Judge Bitas approved the One Hundred Twenty Thousand Pesos (P120,000.00) cash bail bond posted by Miralles before the Office of the Clerk of Court.^[10]

In his complaint dated April 11, 2011, Prosecutor Tabao assailed the authority of Sheriff Cabcabin to issue the said certification, considering that no arrest warrant had yet been issued against Miralles, to wit:

When RTC-7 issued the Order of 02 February 2011 x x x **where it found probable cause against accused MIRALLES, the court, instead of**

issuing the corresponding warrant of arrest against MIRALLES as required by the Rules, granted him bail in the reduced amount of P40,000.00 even when said accused never filed a Motion To Fix Bail much less, a Motion to Reduce Bail.

Consequently, there being no warrant of arrest against MIRALLES we then find it very intriguing and very hard to understand what the basis was of CABCABIN in entertaining MIRALLES. What was MIRALLES surrendering for when there was no arrest warrant against him? Did he verify and ask MIRALLES to show the warrant of arrest against him so he can determine the amount of bail? Was MIRALLES escorted and under police custody when he went to CABCABIN?

February 4, 2011, when MIRALLES went to surrendered (sic) to CABCABIN, is (sic) **FRIDAY**. Judge Bitas was in his Court (as shown by the fact that he approved the cash bond also on the same day). Why did CABCABIN, who is not a person in authority, allow MIRALLES to surrender to him? He should have directed MIRALLES to surrender to Judge Bitas instead of him. Judge Bitas could then have noted and certified that MIRALLES surrendered to him and is now in custody of the law - thereby legally paving the way for him to post his cash bail bond.

But then again there is the unexplained situation of how can an accused person surrender himself to a judge when there is no warrant of arrest against him.^[11]

On June 21, 2011, the Office of the Court Administrator (OCA) directed Sheriff Cabcabin to Comment on the complaint of Prosecutor Tabao.^[12]

In his comment dated July 14, 2011, Sheriff Cabcabin admitted that he issued the Certification dated February 4, 2011 to the effect that Miralles voluntarily surrendered himself to avail of his right to bail, but only after the said accused had posted cash bond in the total amount of P120,000.00 for the 3 criminal cases. He further explained that:

Accused DANILO MIRALLES initially surrendered at Branch 7 of this Court [RTC] but since the Sheriff in said branch was out of the office on official business said accused was accompanied by a personnel in Branch 7 to the Office of the Clerk of Court for the purpose of posting his bond.

It is not only the Presiding Judge in Branch 7 who requests Sheriffs in the Office of the Clerk of Court, in the absence of the branch Sheriff, to issue such certification all the Presiding Judges in Branches 6, 7, 8, 9 & 34 also require us Sheriffs to issue said Certificate of Voluntary Surrender before the bond approved by them.

Accused DANILO A. MIRALLES, voluntarily surrendered to this Court [RTC]. I was working in the Office of the Clerk of Court when he posted his cash bond. I merely issued a Certification that he voluntarily surrendered, which he truly did. The certification was required by the Presiding Judge of Branch 7 before the bond was approved. As to why accused voluntarily surrendered when there is yet no warrant of arrest, I

have no knowledge anymore of this. He entered the Office of the Clerk of Court where I was at that time and then he manifested that he was surrendering and that he was going to post bail, which he did. It is a common occurrence in this Court [RTC] that accused go to the branch to voluntarily surrender in order to post his bail and upon request of the Presiding Judge concerned, the Sheriff issues a Certificate to this effect.

[13]

In his Supplemental Manifestation dated July 26, 2011, Sheriff Cabcabin submitted photocopies of Orders issued by different Branches of the RTC of Tacloban City, directing him to release accused from court custody after posting their respective cash bond in order to prove that it is a common practice in the RTC to allow accused to voluntarily surrender to court sheriffs for purposes of posting bail bond for their temporary liberty.^[14] He also admitted having no idea as to the source of authority that sheriffs have to allow accused to voluntarily surrender to them, to wit:

x x x I have just inherited this practice from my predecessors. And considering that such surrender is made upon request of the Court [RTC], I always take it as lawful and nothing unlawful at all. Because had I been advised by my superiors that such practice was irregular and therefore unlawful, I would not have definitely done it. And because of this act of mine I am really very sorry and I apologize [to] this Court [RTC] for not having been extra careful in entertaining this matter. I promise I will not repeat the same mistake.^[15]

In a Report^[16] dated July 22, 2014, the Court, upon recommendation of the OCA that the charge in the complaint appears to be serious but cannot be resolved on the basis of the records due to conflicting versions presented by the parties, referred the administrative complaint to the Executive Judge of the RTC of Tacloban City, for investigation, report and recommendation.

On December 2, 2014, Executive Judge Alphinor C. Serrano conducted a hearing where the parties adopted the same evidence they submitted before the OCA.^[17]

In his Investigation Report dated February 10, 2015, Judge Serrano found Sheriff Cabcabin guilty of Simple Irregularity in the Performance of Duties and recommended that he be fined the amount of Five Thousand Pesos (P5,000.00) with stern warning that a repetition of the same act shall be dealt with more severely.

In resolving the sole issue of whether Sheriff Cabcabin has the authority to receive the voluntary surrender of Miralles as shown in his Certification dated February 4, 2011, Judge Serrano found him liable for simple irregularity in the performance of the complained act which was not within the scope of his official functions as embodied in the Revised Manual for Clerks of Court, thus:

It is a principle in the Law of Public Officers that "an administrative officer has only such powers as are expressly granted to him and those necessarily implied in the exercise thereof. These powers should not be extended by implication beyond what may be necessary for their just and reasonable execution." (*Kilusang Bayan vs. Dominguez, 205 SCRA 92*). Thus, every public officer is guided by law in the execution of its official function.

In order to resolve the foregoing issue, it is necessary to define what are the duties of respondent as Sheriff IV under existing laws and regulations.

Under the 2002 Revised Manual for Clerks of Court, (Chapter VI, D, 2.1.5), a deputy Sheriff IV, V and VI have the following duties:

2.1.5.1. serves and/or executes all writs and processes of the Courts and other agencies, both local and foreign;

2.1.5.2. keeps custody of attached properties or goods;

2.1.5.3. maintains his own record books on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes executed by him;

2.1.5.4. submits periodic reports to the Clerk of Court;

2.1.5.5. does related tasks and performs other duties that may be assigned by the Executive Judge and/or Clerk of Court;

The duty of a sheriff is to execute judgments and orders of a Court. Perusal of the above-quoted responsibilities pertaining to a Sheriff IV reveals that it is not one of the official duties of respondent to entertain the voluntary surrender of accused Miralles for the purpose of posting cash bond. While the said act of surrendering to respondent is not expressly mentioned, it cannot also be implied from the express duties of a Sheriff IV under the law.

Respondent in his answer justified his act by saying that he pursued such action because he only inherited such process from his predecessors. He justified further by saying that all presiding judges of Branch 6, 7, 8, 9 and 34 request him to entertain the voluntary surrender of accused in their respective Court who want to post bond.

However, had Judge Bitas or the Executive Judge issued a specific Order allowing accused Miralles to surrender to Respondent, that task would have fallen under: "***does related tasks and performs other duties that may be assigned by the Executive Judge and/or Clerk of Court.***"

Failing this, and without the said Order, Respondent has no authority to receive the voluntary surrender of accused Miralles.

Respondent went beyond his official duties when he entertained the voluntary surrender of accused Miralles, without any order from Judge Bitas, the Executive Judge or the Clerk of Court. He was not mindful of his duties as a Sheriff IV. Said act amounts to a misfeasance which renders any public officer liable under the law. The evidences (Court

Orders) submitted/offered by Respondent in his defense had nothing to do with the case and were therefore irrelevant. Respondent cannot escape administrative sanction by interposing his justifications that it was a common practice which he just inherited from his predecessors. The same has no merit.

Respondent having been in the government service for a long period of time should have had a clear understanding of his official duties under the law. If, indeed, it became a[n] established practice, and pursued such action upon the behest of the presiding judges of RTC Tacloban, he should have clarified the same, and secured the written order from the judge concerned, or much better, refused to perform an act not sanctioned bylaw.^[18]

The Court adopts the findings of the Investigating Judge, but modifies the recommended penalty.

Section 1, Canon IV^[19] of the Code of Conduct for Court Personnel^[20] states that court personnel shall at all times perform official duties properly and with diligence. Section 7 thereof also provides that court personnel shall not be required to perform any work outside the scope of their job description, *viz.*:

Sec. 7. Court personnel **shall not be required** to perform any work or duty **outside the scope of their assigned job description**. (Emphasis supplied)

The foregoing rules are rooted in the constitutional principle that public office is a public trust; hence, all public officers and employees, including court personnel in the Judiciary, must serve the public with utmost responsibility and efficiency.^[21] "Exhorting court personnel to exhibit the highest sense of dedication to their assigned duty necessarily precludes requiring them to perform any work outside the scope of their assigned job description, save for duties that are identical with or are subsumed under their present functions."^[22] Diligent and proper performance of official duties thus impels that court personnel should be well aware of and duly act within the scope of their assigned duties and responsibilities.

Under 2.2.4 of Chapter VI, Volume I of the 2002 Revised Manual for Clerks of Court - which defines the general functions of all court personnel in the judiciary - the Sheriff IV is tasked with serving writs and processes of the court; keeping custody of attached properties; maintaining the record book on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes; and performing such other duties as may be assigned by the Executive Judge, Presiding Judge and/or Branch Clerk of Court. Under 2.1.5 of the same Chapter, the Deputy Sheriffs IV,V and VI are similarly tasked to serve writs and processes of the court; to keep custody of attached properties; to maintain the record book on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes; and to do related tasks and perform other duties that may be assigned by the Executive Judge and Clerk of Court.

It bears emphasis that while the sheriff may perform other tasks and duties assigned by the said Judges or Clerks of Court, the same should be "related" thereto, *i.e.*, (1) within the scope of his job description, or (2) identical with or