

EN BANC

[A.M. No. RTJ-02-1738 (formerly OCA IPI No. 01-1325-RTJ), November 17, 2005]

**ATTY. JULIANA ADALIM-WHITE, COMPLAINANT, VS. HON. JUDGE
ARNULFO O. BUGTAS, PRESIDING JUDGE, RTC, BRANCH 2,
BORONGAN, EASTERN SAMAR, RESPONDENT.**

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Before us is a verified letter-complaint dated August 10, 2001, filed by Atty. Juliana Adalim-White against Judge Arnulfo O. Bugtas, Presiding Judge, Branch 2, Regional Trial Court (RTC) of Borongan, Eastern Samar, for ignorance of the law relative to Criminal Case No. 10772 entitled *People of the Philippines vs. Manuel Bagaporo, Jr.*

The full text of the letter-complaint is as follows:

I bring to the attention of your Honors the act of Honorable Judge Arnulfo O. Bugtas, Presiding Judge, Branches I and II, Regional Trial Court, Borongan, Eastern Samar for ordering the Release on Recognizance [of] Mr. Manuel Bagaporo, Jr., a convict of frustrated murder before terminating service of the minimum penalty, and pending the approval of the prisoner's application for parole.

Thank you.^[1]

In an Indorsement dated August 28, 2001, the Office of the Court Administrator directed respondent to file his comment to the complaint.^[2]

On October 29, 2001, respondent filed his Comment admitting that he issued an order allowing Manuel Bagaporo, Jr. (Bagaporo) to be released upon recognizance of the Provincial Jail Warden of Eastern Samar, Alexandrino R. Apelado, Sr. Respondent avers that: Bagaporo was convicted by the trial court of the crime of frustrated murder and meted the penalty of imprisonment ranging from four years and two months to eight years and one day; Bagaporo served sentence; subsequently, he filed an application for release on recognizance; in support of his application, Provincial Jail Warden Apelado issued a certification to the effect that Bagaporo has been confined at the Provincial Jail since February 9, 1996 and is already entitled to parole; another certification was issued by Supervising Probation and Parole Officer Eulalia R. Columbretis showing that Bagaporo had applied for parole in line with the Department of Justice's "*Maagang Paglaya* Program." Respondent contends that on the basis of these certifications and on the rule that bail being discretionary upon conviction by the RTC of an offense not punishable by death, *reclusion perpetua* or life imprisonment, the court granted Bagaporo's application for bail upon recognizance of Apelado.^[3]

In our Resolution of November 25, 2002, we directed the parties to manifest to this Court if they are willing to submit this case for resolution on the basis of the pleadings filed.^[4]

In his Manifestation dated January 27, 2003, respondent requested that a formal investigation be conducted to enable him to face his accuser.^[5] On the other hand, despite due notice, complainant failed to comply with the November 25, 2002 Resolution of this Court.

On November 16, 2004, respondent filed a Motion to Dismiss on the ground of lack of evidence and that complainant is not interested in prosecuting her complaint.^[6]

In our Resolution of February 7, 2005, we referred the instant case to Justice Lucas P. Bersamin of the Court of Appeals (CA) for investigation, report and recommendation on grounds that desistance of a complainant is not a basis for dismissing an administrative case and because there is a need to establish certain facts surrounding the complained acts allegedly committed by respondent.^[7] Thereafter, the Investigating Justice set the case for hearing on various dates.

On April 15, 2005, respondent again filed a Motion to Dismiss on the ground that complainant failed to appear during the hearings set by the Investigating Justice on March 30 and 31, 2005.^[8]

On April 29, 2005, the Investigating Justice issued a Resolution denying respondent's Motion to Dismiss and resetting the hearing for the last time on May 31, 2005, with warning that the case shall be deemed submitted for study, report and recommendation should the parties fail to appear at the date set for hearing.^[9]

In a Manifestation dated May 13, 2005, complainant indicated her desire to submit the case for resolution on the basis of the pleadings and annexes filed.^[10] On the other hand, respondent sent a telegraphic communication dated May 31, 2005 manifesting that the CA may consider the case submitted for resolution; and praying that he be allowed to submit a memorandum.^[11] The Investigating Justice granted respondent's motion.^[12] On June 30, 2005, respondent filed his Memorandum through registered mail.^[13]

On August 18, 2005, the Investigating Justice submitted his Report and Recommendation to this Court with the following findings:

The undersigned Investigating Justice concludes that Judge Bugtas was guilty of gross ignorance of the law and gross neglect of duty for committing the following acts and omissions in relation to the case of convict Bagaporo, Jr., to wit:

1. Due to the penalty imposed on him, Bagaporo, Jr. should have been committed to the National Penitentiary upon his conviction (whether or not he appealed). The failure of Judge Bugtas, if he was the trial judge, to issue forthwith the *mittimus* to commit Bagaporo, Jr. as a national prisoner under Presidential Decree No. 29 to the New

Bilibid Prison in Muntinlupa City was a serious disobedience to Circular No. 4-93-A dated April 20, 1992.

2. In acting on Bagaporo, Jr.'s application for release, Judge Bugtas supposedly relied on the recognizance of Provincial Jail Warden Apelado, Sr. and on the other documents submitted in support of the convict's application for release on recognizance. Judge Bugtas contends that his act did not constitute a violation since bail was 'discretionary upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment.'

The undersigned Investigating Justice does not accept Judge Bugtas' good faith because Judge Bugtas was apparently lacking in sincerity. He was not unaware that Bagaporo, Jr. was serving final sentence for which his indeterminate penalty had a minimum of 4 years and 2 months. When Judge Bugtas ordered the release, Bagaporo, Jr. had not yet served even the minimum of the indeterminate sentence, a fact that Judge Bugtas should have known through a simple process of computation. Even if he was informed of Bagaporo, Jr.'s pending application for parole, Judge Bugtas had no legal basis to anticipate the approval of the application and to cause the convict's premature release. He was thus fully aware that Bagaporo, Jr. could not be released even upon the recognizance of the Provincial Jail Warden.

3. Judge Bugtas' act of prematurely releasing the convict in effect altered the final sentence of Bagaporo, Jr. The undersigned Investigating Justice submits that Judge Bugtas thereby violated Art. 86, Revised Penal Code which provides:

Art. 86. *Reclusion perpetua, reclusion temporal, prision mayor, prision correccional and arresto mayor.* – The penalties of *reclusion perpetua, reclusion temporal, prision mayor, prision correccional and arresto mayor shall be executed and served in the places and penal establishments provided by the Administrative Code in force or which may be provided by law in the future.*

Judge Bugtas could give no acceptable explanation for his act. A convict's release from prison before he serves the full term of his sentence is due either to good conduct allowances... or to the approval of his application for parole. The former is granted to him by the Director of Prisons (now Director of the Bureau of Corrections), pursuant to Art. 99, Revised Penal Code; the latter, by the Board of Pardons and Parole that was created and constituted pursuant to Act No. 4103, as amended. Obviously, the grant is not a judicial prerogative.

Consequently, Judge Bugtas arrogated unto himself authority that pertained under the law to an administrative official or agency.

4. Judge Bugtas contends that his order of release on recognizance was correct considering that the convict had already been in custody for a period equal to the minimum imprisonment meted out by the trial court. To support his contention, he cites Sec. 16, Rule 114, 2000 Rules of Criminal Procedure, to wit:

Sec. 16. *Bail, when not required; reduced bail or recognizance.* – No bail shall be required when the law or these Rules so provide.

When a person has been in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, he shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal. If the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after thirty (30) days of preventive imprisonment.

A person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law or any modifying circumstance, shall be released on a reduced bail or on his own recognizance, at the discretion of the court.

The undersigned Investigating Justice opines that Judge Bugtas' contention compounds his already dire situation. He seems to believe that the quoted rule applies to a convict like Bagaporo, Jr. He has no realization at all (or, if he has, he conceals it) that the rule applies only to an accused undergoing preventive imprisonment during trial or on appeal; and that the rule has absolutely no application to one already serving final sentence. Such ignorance, whether pretended or not, is terrifying to see in a judicial officer like Judge Bugtas, a presiding judge of the Regional Trial Court.

5. Judge Bugtas labors under a mistaken notion about the Indeterminate Sentence Law, that once the convict has been in custody for the duration of the minimum of the indeterminate sentence, he may be released even if his application for parole is still pending. He thereby ignores that the benefit under the Indeterminate Sentence Law is accorded to the convict only after the Board of Pardon and Parole has determined his application favorably after considering all the cogent circumstances. ...

...

It is crucial that Judge Bugtas be reminded that the convict must remain in prison pending the consideration of the convict's application for parole by the Board of Pardons and Parole, for there is no assurance of the grant of his application.