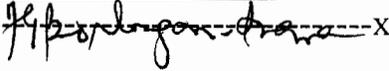


A.M. No. RTJ-15-2426 [Formerly A.M. No. 05-3-83-MTC] - OFFICE OF THE COURT ADMINISTRATOR, Complainant, v. JUDGE ALEXANDER BALUT, Respondent.

Promulgated:

June 16, 2015

X----------X

DISSENT

BERSAMIN, J.:

The well-written main opinion presents well the undeniable facts of the case against respondent Judge, who has committed the grave offense of dipping his fingers into the judicial funds in the custody of court employees working under him. It dismisses respondent Judge from the service for gross misconduct.

Under ordinary circumstances, I would have no objection to imposing the supreme penalty of dismissal from the service. Respondent Judge should not have sullied himself by showing personal interest in the judicial funds because he should have been well aware of their nature as fiduciary funds. He should not be condoned for what he had done.

However, I respectfully urge that the Court takes note of certain circumstances that I humbly suggest should be considered and treated as mitigating circumstances to temper the supreme penalty of dismissal from the service to a lesser penalty.

The **first** is that respondent Judge had apparently no intention to misappropriate or steal the funds. He willingly signed for the “borrowings,” thereby evincing the lack of the intention to appropriate the funds for himself. He also issued certifications of his “borrowings.” The implication of his doing so is that he intended all along to repay the “borrowings.”

The **second** is that respondent Judge already returned the funds he had “borrowed.”

In the case of the Municipal Trial Court (MTC) in Bayombong, Nueva Vizcaya, Judith En. Salimpade, Clerk of Court II, was found by the audit team to have incurred as of August 31, 2003 a total shortage of ₱2,057,378.59. In the case of the audit of the Municipal Circuit Trial Court (MCTC) of Aritao-Sta. Fe, the accountability of Lydia Ramos, Clerk of Court of the MCTC of Aritao-Sta. Fe, was declared as fully settled as of

August 2004; while the accountability of Eduardo S. Esconde, whom Ramos had succeeded in that position on July 16, 2000 without proper turnover of accountabilities, was found to be short of ₱58,100.00 as of the time that the matter was submitted by the Office of the Court Administrator to the Court for its consideration. **Although said accountable officers in both stations had revealed to the auditors that respondent Judge had borrowed money from their collections, and that they had accommodated him only out of fear of him, there is no question that: (1) he did return the ₱240,000.00 borrowed to Salimpade, who issued a certification to the effect that he had thereby “completely settled his monetary accountability to the MTC, Bayombong;” and (2) he returned the amount of ₱207,774.42 as of May 9, 2002 to the Clerk of Court of the MCTC.**

The restitution of the “borrowed” funds can be taken as a mitigating factor in favor of respondent Judge. The Court has held so in *Perez v. People*,¹ a criminal case for malversation:

It bears stressing that the full restitution of the amount malversed will not in any way exonerate an accused, as payment is not one of the elements of extinction of criminal liability. Under the law, the refund of the sum misappropriated, even before the commencement of the criminal prosecution, does not exempt the guilty person from liability for the crime. **At most, then, payment of the amount malversed will only serve as a mitigating circumstance akin to voluntary surrender, as provided for in paragraph 7 of Article 13 in relation to paragraph 10 of the same Article of the Revised Penal Code.** (Bold emphasis added)

The **third** is that respondent Judge has been in the service for nearly 22 years now. From his position as an MCTC Judge in Nueva Vizcaya in 1993, he was promoted on September 1, 2005 to the Regional Trial Court in Quezon City. The promotion surely indicated that he had passed the Judicial and Bar Council’s standard of scrutiny, earned the President’s stamp of approval, and eventually assumed the higher office.

The safekeeping of collected funds is essential to the goal of an orderly administration of justice, and no protestation of good faith can override the mandatory nature of circulars designed to promote full accountability for government funds. But while this Court has sternly disciplined, and deservedly so, personnel in its ranks, warning that the act of misappropriating judiciary funds constitutes dishonesty and grave misconduct punishable by dismissal from service even on the first offense, it has time and again extended nevertheless its benevolence to reduce the impossible penalty. The benevolence occasionally exhibited by the Court finds legal basis in the postulate that the disciplining authority has the

¹ G.R. No. 164763, February 12, 2008, 544 SCRA 532, 566-567.

discretion to consider mitigating circumstances in the imposition of the proper penalty. As expounded in *Arganosa-Maniego v. Salinas*:²

Pursuant to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, Grave Misconduct and Dishonesty, being in the nature of grave offenses, carry the extreme penalty of dismissal from the service with [accessory penalties]

However, in several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. **Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the impossible penalty.** (emphasis and words in bracket added.)

Thusly, in *Arganosa-Maniego v. Salinas*, respondent Rogelio Salinas, albeit found liable for gross misconduct and dishonesty for encashing two checks in the name of complainant judge amounting to ₱22,521.00 by forging the latter's signature, was only **suspended for one year without pay**, taking into account that the offense was his first in his more than 10 years of government service, and that he acknowledged and exhibited remorse for his infractions and restituted the amount involved.³ As the Court observed there, where a penalty less severe would suffice, whatever missteps had been committed by the employee ought not to be visited with a consequence as severe as dismissal.⁴

In the matter of the *Report on the Financial Audit on the Books of Accounts of Mr. Delfin T. Polido, Former Clerk of Court of Municipal Circuit Trial Court, Victoria-La Paz, Tarlac*,⁵ respondent judge was **fined** ₱10,000.00 for a shortage of ₱38,000.00 in the judiciary fund. Respondent judge later restituted the shortage.

IN VIEW OF THE FOREGOING CIRCUMSTANCES, I respectfully submit that dismissal from the service is a penalty too severe for respondent Judge. Instead, I VOTE that he should suffer suspension from office without pay for two years.


LUCAS P. BERSAMIN
Associate Justice

² A.M. No. P-07-2400, June 23, 2009, 590 SCRA 531, 544-545.

³ Id. at 547.

⁴ Id.

⁵ A.M. No. 05-11-320-MCTC, February 17, 2006, 482 SCRA 571, 577.