SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LEONILA PAREDES MONTERO, Petitioner,	**G.R. No. 239827**
	Present:
-versus-	LEONEN, *J., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.*
THE HONORABLE OFFICE OF THE OMBUDSMAN AND AUGUSTIN M. CLORIBEL, Respondents.	**Promulgated:** JUL 27 2022

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DECISION

LEONEN, *J.*:

The Office of the Ombudsman is constitutionally mandated to investigate and prosecute illegal, unjust, improper, or inefficient acts of public officials.[1] Its findings shall be respected and sustained unless it be proven that it committed grave abuse of discretion.[2]

This resolves a Petition for *Certiorari*[3] under Rule 65 of the Rules of Court with prayer for the issuance of temporary restraining order and writ of

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[1] CONST., art. XI, sec. 13(1) provides:
SECTION 13. The Office of the Ombudsman shall have the following powers, functions, and duties:
(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

[2] *Casing v. Ombudsman*, 687 Phil. 468, 475–476 (2012) [Per J. Brion, Second Division].

[3] *Rollo*, pp. 3–31.

preliminary injunction, assailing the Resolution[4] and Order[5] of the Office of the Ombudsman finding probable cause to indict Leonila Paredes Montero (Montero) for four counts of unlawful appointments under Article 244 of the Revised Penal Code and four counts of violation of Section 3(e) of Republic Act No. 3019. The assailed Order denied Montero's Motion for Reconsideration.[6]

On August 14, 2015, Augustin M. Cloribel (Cloribel) filed a Complaint-Affidavit[7] against Montero, charging her with illegal use of public funds or property under Article 220 of the Revised Penal Code, unlawful appointment under Article 244 of the Revised Penal Code, and violation of Sections 3 (a) (e) and (g) of Republic Act No. 3019.[8] Montero was likewise administratively charged with grave misconduct, gross negligence, and conduct prejudicial to the service.[9]

Cloribel alleged that Montero won the 2013 mayoral race of the Municipality of Panglao, Bohol. Upon taking her oath on July 1, 2013, she appointed four consultants, namely, Noel E. Hormachuelos,[10] Danilo A. Reyes,[11] Apolinar B. Fudalan,[12] and Fernando B. Penales (Hormachuelos et al.).[13] Cloribel claimed that Hormachuelos et al. were all candidates who lost in the May 2013 synchronized elections, making their appointment violative of the one-year prohibition on appointment of losing candidates under the Constitution and the Local Government Code.[14]

To make the appointments regular, Montero allegedly conspired with her husband and daughter, both members of the Sangguniang Bayan of Panglao, to facilitate the passage of four resolutions[15] authorizing Montero to hire Hormachuelos et al.

Cloribel asserted that the resolutions were defective, having been passed eight days after the appointments were made. He further contended

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[4] Id. at 37–50. The November 8, 2016 Resolution in OMB-V-C-15-0266 was penned by Graft Investigation and Prosecution Office II Irish Inabangan Amores and reviewed by Officer-in-Charge Jane Aguilar of the Evaluation and Investigation Office – B. It was later approved by Deputy Ombudsman for the Visayas Paul Elmer M. Clemente and Ombudsman Conchita Carpio Morales of the Office of the Ombudsman.

[5] Id. at 51–53. The January 15, 2018 Order in OMB-V-C-15-0266 was penned by Graft Investigation and Prosecution Officer II Carla Michelle M. Chaves-Gonzaga and reviewed by Assistant Ombudsman-Visayas Carla Juris Narvios-Tanco. It was later approved by Deputy Ombudsman for the Visayas Paul Elmer M. Clemente and Ombudsman Conchita Carpio Morales of the Office of the Ombudsman.

[6] Id. at 52.

[7] Id. at 54–92.

[8] Id. at 37.

[9] Id. at 54.

[10] Hormachuelos was appointed as municipal administrator and consultant for administrative services.

[11] Reyes was appointed as public information officer.

[12] Fudalan was appointed as public employment service office coordinator; livelihood, technical education, and skills development authority consultant; and information technology consultant.

[13] *Rollo*, pp. 56–58, 168. Penales was appointed as consultant on infrastructure and engineering services.

[14] Id. at 57, citing CONST, art. IX-B, sec. 6 and LOCAL GOVT. CODE, sec. 94(b).

[15] Id. at 93–100.

that the resolutions contained no stipulation as to the appointees' job description, duration of contract, as well as amount of and source and availability of funds for their compensation. There being no budgetary appropriation for their salary, Montero allegedly wrote to the Sangguniang Bayan, requesting for a supplemental appropriation amounting to ₱14,500,000.00. This appropriation supposedly included amounts for their compensation.[16]

Cloribel also averred that the Commission on Audit noticed the illegality of the appointments in its 2013 Annual Audit Report and found that they were made in violation of the one-year prohibition. The Commission likewise observed that payments were made to the appointees despite the absence of supporting documentation, such as duly approved accomplishment reports and individual contracts. In its 2014 Annual Audit Report, it supposedly also noted that the procurement of the consultancy services violated Section 2 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 for not having undergone competitive bidding.[17]

Cloribel added that other than the four resolutions, no other documentary requirements were issued for the hiring of the four consultants. He maintained that no consultancy contracts were signed by four individuals nor were there appointment papers issued on their behalf.[18]

In her Counter-Affidavit,[19] Montero denied the charges against her. She cited two Opinions[20] issued by the Department of the Interior and Local Government, which state that the prohibition does not cover the hiring of a losing candidate on a daily or casual basis, and consultancy services are not considered as government services within the prohibition's purview.[21] She also insisted that the Government Procurement Policy Board has already declared that the Government Procurement Reform Act[22] does not apply to the engagement of personal services through contract of service. According to her, these opinions by the Government Procurement Policy Board and the Department of the Interior and Local Government carry greater weight than the findings of the Commission on Audit.[23]

Montero likewise relied on Memorandum Circular No. 40-98 issued by the Civil Service Commission, which indicates that contracts of service are not covered by the rules of the Civil Service Commission but by the rules promulgated by the Commission on Audit.[24]

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[16] Id. at 58–60.
[17] Id. at 61–64.
[18] Id. at 69.
[19] Id. at 159–192.
[20] These refer to DILG Opinion Nos. 069-93 and 072-04.
[21] *Rollo*, pp. 159–160.
[22] Republic Act No. 9184 (2002).
[23] *Rollo*, pp. 161–163, citing in GPPB Policy Opinion PM 02-2012.
[24] Id. at 160.

Montero added that she merely depended on the resolutions of the Sangguniang Bayan, which must be presumed valid.[25] She also cited Section 444 (b)(iv)[26] of the Local Government Code and argued that she did not facilitate the passage of the resolutions. Instead, she merely performed her duty of initiating and proposing legislative measures to the Sangguniang Bayan.[27]

Finally, Montero asserted that the Municipality of Panglao received the Seal of Good Housekeeping from the Department of the Interior and Local Government in 2015, which shows that the local government unit adheres to the most stringent standards of transparency, integrity, and service delivery.[28]

In its assailed Resolution,[29] the Office of the Ombudsman found probable cause to indict Montero for four counts of unlawful appointments and four counts of violation of Section 3(e) of Republic Act No. 3019. The other criminal charges filed against Montero were dismissed for lack of evidence:

> WHEREFORE, finding probable cause to indict respondent for four counts of Unlawful Appointments, and four counts of Violation of Sect. 3(e) of R.A. 3019, as amended, let the corresponding Informations be filed with the Sandiganbayan.
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> The charges for Violation of Sec. 3(a) and (g) of R.A. 3019, as amended, and Illegal Use of Public Funds or Property is dismissed for lack of evidence.[30]

Montero moved for reconsideration but it was denied in an Order.[31]

Dissatisfied, Montero filed this Petition for Certiorari.[32]

Petitioner argues that the Office of the Ombudsman committed grave abuse of discretion when it grossly misappreciated the evidence and the law.

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[25] Id. at 161.

[26] LOCAL GOVT. CODE, sec. 444 provides:
Section 444. The Chief Executive: Powers, Duties, Functions and Compensation. —
(a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.
(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:
(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:
. . . .
(iv) Initiate and propose legislative measures to the sangguniang bayan and, from time to time as the situation may require, provide such information and data needed or requested by said sanggunian in the performance of its legislative functions[.]

[27] *Rollo*, pp. 161–162.

[28] Id. at 164.

[29] Id. at 37–50.

[30] Id. at 48.

[31] Id. at 52.

[32] Id. at 3–31.

She claims that the elements of unlawful appointments are lacking inasmuch as the idea to hire Hormachuelos et al. originated from the Sangguniang Bayan and that she was merely authorized to hire them.[33]

Further, she avers that the appointments of Hormachuelos et al. are not covered by the one-year prohibition given that consultancy services are considered as nongovernment services under the civil service rules.[34]

Citing *Joson v. Ombudsman*,[35] petitioner insists that there are several factors that support her claim that Hormachuelos et al. were not appointed to public office. These include the fact that their duties came from a job order and not a law and that they were not given a portion of the sovereign authority. She also claims that they do not receive benefits given to government employees and that service contracts are not considered as government service under the Revised Omnibus Rules on Appointment and other Personnel Actions.[36]

Petitioner likewise asserts that there is no probable cause to indict her with violation of Section 3(e) of Republic Act No. 3019, there being no undue injury to the government. She maintains that Hormachuelos et al. accomplished their tasks, entitling them to payment of honoraria. Even the element of manifest partiality is lacking since she merely relied on the resolutions, issuances of the Civil Service Commission, and opinions of the Department of the Interior and Local Government.[37]

Petitioner filed a Supplemental Petition,[38] reiterating her arguments.[39]

Finally, she informed this Court of a Decision[40] rendered by the Court of Appeals involving the administrative charges against her. In this Decision, the Court of Appeals held that there was no substantial evidence to hold her liable for conduct prejudicial to the best interest of the service. Nonetheless, she was found guilty of simple misconduct.[41]

In his Comment,[42] private respondent argues that this Court must not interfere with the finding of probable cause of the Office of the Ombudsman, unless it be proven that the latter acted with grave abuse of discretion.[43]

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33 Id. at 20–25.
34 Id.
35 784 Phil. 172 (2016) [Per J. Mendoza, Second Division].
36 *Rollo*, p. 25–27.
37 Id. at 29.
38 Id. at 276–283.
39 Id. at 279–281.
40 Id. at 205–224. The June 28, 2018 Decision in CA-G.R. SP No. 154605 was penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Pablito A. Perez and Rafael Antonio M. Santos of the Special Twelfth Division of the Court of Appeals, Manila.
41 Id. at 218–221.
42 Id. at 227–248.
43 Id. at 238–241.

Private respondent also refutes petitioner's assertion that the Sangguniang Bayan merely authorized her to hire Hormachuelos et al. as the resolutions were only issued after they began rendering their services.[44] He further avers that the Office of the Ombudsman correctly found probable cause to indict petitioner since all the elements of the crimes were sufficiently established.[45]

Lastly, private respondent maintains that the Petition has been rendered moot by the filing with the Sandiganbayan of the Informations against petitioner.[46]

The public respondent, through the Office of the Solicitor General, filed a separate Comment.[47]

Public respondent points out that preliminary investigation does not entail the determination of the accused's guilt but merely the existence of probable cause for the purpose of filing an information.[48] It also contends that the pieces of evidence presented were sufficient to support a *prima facie* case against petitioner.[49]

Public respondent asserts that the appointment of Hormachuelos et al. as consultants under a contract of service is a ploy to circumvent the one-year prohibition. It claims that they also perform duties and responsibilities analogous to the functions of a public office.[50]

Finally, public respondent argues that courts do not generally interfere with the exercise of its investigative powers absent grave abuse of discretion.[51]

In her two separate Replies,[52] petitioner asserts that the Office of the Ombudsman committed grave abuse of discretion when it unjustifiably failed to consider facts and evidence in its determination of probable cause. She claims the abuse of discretion is further demonstrated by the favorable decision rendered by the Court of Appeals in her administrative case, where she was only found guilty of simple misconduct.[53] She also reiterates her other arguments raised in her Petition.[54]

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44 Id. at 241–242.
45 Id. at 240–244.
46 Id. at 244–248.
47 Id. at 330–360.
48 Id. at 340–346.
49 Id. at 347.
50 Id. at 346–354.
51 Id. at 357.
52 Id. at 193–204, 385–395.
53 Id at 194–198, 386–391.
54 Id. at 198–199, 391–393.

The issue to be resolved is whether or not the public respondent Office of the Ombudsman committed grave abuse of discretion in finding probable cause against petitioner Leonila Paredes Montero.

The petition is unmeritorious.

This Court has adopted a policy of noninterference with the Office of the Ombudsman's exercise of its constitutional mandate. We shall not disturb its determination of probable cause unless it be proven that it committed grave abuse of discretion.[55]

Dichaves v. Office of the Ombudsman[56] teaches:

> As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"
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> An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is executive in nature.
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> The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which [they were] prosecuted."
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> The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.
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> Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:
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>> [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely

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[55] *Casing v. Ombudsman*, 687 Phil. 468, 475–476 (2012) [Per J. Brion, Second Division].
[56] 802 Phil. 564 (2016) [Per J. Leonen, Second Division].

> swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[57] (Citations omitted)

For a petition challenging the Office of the Ombudsman's finding to prosper, it must be shown that the tribunal "exercised its power in an arbitrary and despotic manner, by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law."[58]

In *Cambe v. Office of the Ombudsman*:[59]

> Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[60]

A perusal of the records reveals that the Office of the Ombudsman committed no grave abuse of discretion in finding probable cause against petitioner for unlawful appointments and violation of Section 3(e) of Republic Act No. 3019.

In *Casing v. Ombudsman*,[61] this Court discussed the evidentiary requirement to establish probable cause:

> In line with the constitutionally-guaranteed independence of the Office of the Ombudsman and coupled with the inherent limitations in a *certiorari* proceeding in reviewing the Ombudsman's discretion, we have consistently held that so long as substantial evidence supports the Ombudsman's ruling, [their] decision should stand. In a criminal proceeding before the Ombudsman, the Ombudsman merely determines whether probable cause exists, i.e., whether there is a sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty; it is merely based on opinion and reasonable belief.[62] (Citations omitted)

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[57] Id. at 589–590.
[58] *Sarigumba v. Sandiganbayan*, 491 Phil. 704, 719 (2005) [Per J. Callejo, Sr., Second Division].
[59] 802 Phil. 190 (2016) [Per J. Perlas-Bernabe, En Banc].
[60] Id. at 214.
[61] 687 Phil. 468 (2017) [Per J. Brion, Second Division].
[62] Id. at 476–477.

Probable cause need not be based on evidence sufficient to procure a conviction. Evidence showing that more likely than not a crime has been committed and that the accused probably committed it will suffice.[63]

In finding probable cause against petitioner for unlawful appointments, the Office of the Ombudsman rejected her claim that the nature of the appointments as job order removes them from the scope of the one-year prohibition:[64]

> Notably, the positions to which Hormachuelos, Reyes, Fudulan and Penales were appointed could not be properly considered as mere job orders because they are performing executive functions which require work not merely on a daily or casual basis contrary to what respondent claims. Their positions appear to be those which aid respondent in her duties as chief executive. The tasks they perform, as reflected in their individual accomplishment reports, are also not in accord with the definition of employment under contract of service or job order as defined by the CSC in its Resolution No. 021480[.][65]

The Office of the Ombudsman likewise found untenable petitioner's assertion that she merely relied on the authority given to her under the resolutions. It held that petitioner had the option not to appoint Hormachuelos et al. considering that the authority given to her did not equate to a directive to appoint them. It further noted that petitioner failed to ensure that Hormachuelos et al. possessed all the qualifications before hiring them.[66]

Similarly, this Court agrees with the finding of probable cause for violation of Section 3(e) of Republic Act No. 3019.

The Office of the Ombudsman correctly ruled that petitioner acted with partiality and evident bad faith when she appointed Hormachuelos et al. despite knowledge of the one-year prohibition. She gave Hormachuelos et al. unwarranted benefits when she hired them to fill vital positions in the local government. Undue injury was caused to the government in the amount of the salary they received.[67]

In the absence of evidence showing that the Office of the Ombudsman committed grave abuse of discretion, this Court shall respect its finding of probable cause.

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63 Id. at 477, citing *Galario v. Office of the Ombudsman*, 554 Phil. 86 (2007) [Per J. Chico-Nazario, Third Division].
64 *Rollo*, p. 44.
65 Id. at 44–45.
66 Id. at 45–46.
67 Id. at 46–47.

Neither can the reversal by the Court of Appeals of the Resolution of the Office of the Ombudsman equate to grave abuse of discretion.

Settled is the rule "that administrative cases are independent from criminal actions for the same act or omission."[68] The dismissal of a criminal charge does not prohibit the continuation of the administrative prosecution.[69]

In *Paredes v. Court of Appeals*:[70]

> It is indeed a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission. Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or *vice versa*. One thing is administrative liability; quite another thing is the criminal liability for the same act.
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> Verily, the fact that the required quantum of proof was not adduced to hold petitioner administratively liable for falsification, forgery, malversation, grave dishonesty, and conduct unbecoming of a public officer in OMB-VIS-ADM-97-0536 does not ipso facto mean that Criminal Cases Nos. 99-525 to 99-531 filed against petitioner for Estafa through Falsification of a Commercial Document before the RTC should be dismissed. The failure to adduce substantial evidence against petitioner in the former is not a ground for the dismissal of the latter. These two cases are separate and distinct; hence, independent from each other.
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> *First*, the quantum of evidence required in an administrative case is less than that required in a criminal case. Criminal and administrative proceedings may involve similar operative facts; but each requires a different quantum of evidence. Administrative cases require only substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In contrast, in Criminal Case Nos. 99-525 to 99-531, respondents are required to proffer proof beyond reasonable doubt to secure petitioner' conviction. Rule 133 of the Revised Rules on Evidence provides:
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>> Sec. 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.
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> Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other. Notably, the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal cases. The prosecution is certainly not precluded from adducing additional evidence to discharge the burden of proof required

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[68] *Paredes v. Court of Appeals*, 555 Phil. 538, 549 (2007) [Per J. Chizo-Nazario, Third Division].
[69] Id.
[70] 555 Phil. 538 (2007) [Per J. Chizo-Nazario, Third Division].

in the criminal cases. Significantly, the prosecution had manifested that it would present testimonial evidence which was not presented in the administrative case.

Second, it is well settled that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability. As such, they may be prosecuted simultaneously or one after another, so long as they do not place the accused in double jeopardy of being punished for the same offense.[71] (Citations omitted and emphasis in the original.)

However, *Nicolas v. Sandiganbayan*[72] clarified that the prior dismissal of an administrative case involving the same acts subject of the criminal action may be pleaded to abate criminal liability if there is a finding in the administrative case that the elements of the crime are not present.

In *Nicolas*, this Court cited the prior case of *Nicolas v. Desierto*,[73] where it absolved public officer Wilfred Nicolas of administrative liability. It found that he was not guilty of bad faith and gross neglect of duty, which incidentally are elements of a violation of Section 3(e) of Republic Act No. 3019. Applying the doctrine of *stare decisis*, this Court used *Desierto* and absolved Nicolas of criminal liability.

In the present case, there was no categorical finding in the administrative case that there was no bad faith and gross neglect of duty. The Court of Appeals, in ruling on the administrative liability of petitioner, made no explicit finding on the existence of bad faith. Instead, it held that there was insufficient evidence to prove "corruption, clear intent to violate the law, or flagrant disregard of established rule. . . to characterize [petitioner's] misconduct as grave."[74]

"Corruption as an element of grave misconduct consists in the act of an official or fiduciary person who unlawfully and wrongfully uses [their] station or character to [personally] procure some benefit. . . or for another person, contrary to duty and the rights of others."[75]

Meanwhile, flagrant disregard of established rule has been characterized as the "propensity to ignore the rules as clearly manifested by [their] actions."[76]

Imperial, Jr. v. Government Service Insurance System[77] teaches:

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71 Id. at 549–550.
72 568 Phil. 297 (2008) [Per J. Carpio-Morales, Second Division].
73 488 Phil. 158 (2004) [Per J. Panganiban, Second Division].
74 *Rollo*, p. 219.
75 *Civil Service Commission v. Belagan*, 483 Phil. 601 (2004) [Per J. Sandoval-Gutierrez, En Banc].
76 *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 297 (2011) [Per J. Brion, En Banc].
77 674 Phil. 286 (2011) [Per J. Brion, En Banc].

> Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto [themselves] responsibilities that were clearly beyond [their] given duties. The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by [their] actions.[78] (Citations omitted)

On the other hand, the violation of Section 3(e) of Republic Act No. 3019 has the following elements:

> (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that [they] acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that [their] action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of [their] functions.[79]

In *Coloma, Jr. v. Sandiganbayan*,[80] we clarified that the second element may be committed in three ways:

> The second element of Section 3 (e) of [Republic Act] No. 3019 may be committed in three ways, that is, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3 (e) of [Republic Act] No. 3019 is enough to convict.
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> On the meaning of "partiality," "bad faith," and "gross negligence," the Court has elucidated:
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> > "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and

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[78] Id. at 297.

[79] *Fuentes v. People*, 808 Phil. 586, 593 (2017) [Per J. Perlas-Bernabe, First Division].

[80] 744 Phil. 214 (2014) [Per J. Mendoza, Second Division].

> thoughtless [individuals] never fail to take on their own property."[81] (Citations omitted)

Here, while it may be inferred from the ruling of the Court of Appeals that no bad faith can be imputed against petitioner with respect to the administrative aspect of the case filed against her, the Office of the Ombudsman explicitly held that she not only acted with evident bad faith but also with partiality. In the absence of evidence showing that the Office of the Ombudsman committed grave abuse of discretion, its findings must be respected.

Accordingly, petitioner cannot use the ruling of the Court of Appeals in the administrative case as basis to reverse the finding of probable cause against her.

Finally, this Court notes that Informations were already filed against petitioner.

Time and again, we have held that once the criminal action is initiated through the filing in court of an information or complaint, any proceeding questioning the finding of probable cause of the prosecutor or the Office of the Ombudsman is rendered moot and academic.[82]

The reason for this rule was explained in *Crespo v. Mogul*:[83]

> The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted [themselves] to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.
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> The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court. The only qualification is

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[81] Id. at 229.

[82] *De Lima v. Reyes*, 776 Phil. 623 (2016) [Per J. Leonen, Second Division].

[83] 235 Phil. 465 (1987) [Per. J. Gancayco, En Banc].

> that the action of the Court must not impair the substantial rights of the accused[. . .] or the right of the People to due process of law.
>
> . . . .
>
> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court [they] cannot impose [their] opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[84] (Citations omitted)

Considering that Informations were already filed, jurisdiction over the case is now with the Sandiganbayan. "[A]ny disposition of the case or dismissal or acquittal or conviction of the accused rests within. . . [its] exclusive jurisdiction, competence, and discretion[.][85]

ACCORDINGLY, the Petition for Certiorari is **DISMISSED.** The November 8, 2016 Resolution and January 15, 2018 Order of the Office of the Ombudsman in OMB-V-C-15-0266 are **AFFIRMED.**

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

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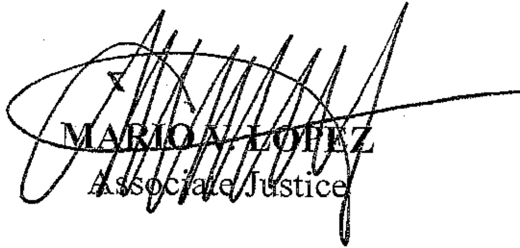
[84] Id. at 474–475.
[85] *Santos v. Orda, Jr.*, 481 Phil. 93, 105 (2004) [Per J. Callejo, Sr., Second Division].



MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice