EN BANC

G.R. No. 254564 — PEOPLE OF THE PHILIPPINES, *petitioner*, *v.* **ERICK MONTIERRO *y* VENTOCILLA**, *respondent.*

G.R. No. 254974 — CYPHER BALDADERA *y* PELAGIO, *petitioner*, *v.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

A.M. No. 21-07-16-SC — RE: LETTER OF THE PHILIPPINE JUDGES ASSOCIATION EXPRESSING ITS CONCERN OVER THE RAMIFICATIONS OF THE DECISIONS IN G.R. NO. 247575 AND G.R. NO. 250295.

A.M. No. 18-03-16-SC — LETTER OF ASSOCIATE JUSTICE DIOSDADO M. PERALTA ON THE SUGGESTED PLEA BARGAINING FRAMEWORK SUBMITTED BY THE PHILIPPINE JUDGES ASSOCIATION.

Promulgated:

July 26, 2022

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SEPARATE CONCURRING AND DISSENTING OPINION

KHO, JR., *J.*:

I fully concur with the *ponencia* insofar as the following aspects are concerned:

> ***First***, that the instant cases and administrative matter have become moot and academic due to the issuance by the Department of Justice (DOJ) of Department Circular No. 18 dated May 10, 2022 (DOJ Circular No. 18) entitled "*Revised Amended Guidelines on Plea Bargaining for Republic Act No. 9165 otherwise known as the 'Comprehensive Dangerous Drugs Act of 2002,'*" which amended DOJ Circular No. 27 entitled "*Amended Guidelines on Plea Bargaining For Republic Act No. 9165 Otherwise Known as the 'Comprehensive Dangerous Drug Act of 2002.'*"
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> Since the plea bargaining proposals of Erick Montierro *y* Ventocilla (Montierro) and Cypher Baldadera *y* Pelagio (Baldadera) are already consistent with the guidelines contained in DOJ Circular No. 18, I agree that the objections of the prosecution to their plea bargaining proposals

are deemed effectively withdrawn; hence, the issue of whether the trial courts erred in overruling the prosecution's continuing objections to their plea bargaining proposals has been rendered moot and academic.[1] ***Second***, the trial courts hearing the drug cases of Montierro and Baldadera should not have hastily approved their plea bargaining proposals over the continuing objections of the prosecution. The trial courts should have first resolved the objections raised – by sustaining or overruling the same – before acting on the said plea bargaining proposals. Thus, the drug cases should be remanded to the courts of origin for further proceedings.[2]

It should be noted that, as stated earlier, since the continuous objections of the prosecution are already deemed withdrawn, the prosecution should be allowed to re-evaluate the plea bargaining proposals of Montierro and Baldadera and determine whether their proposals are acceptable. In the event the accused and the prosecution agree to a plea bargain, the trial courts shall rule on the plea bargaining agreements submitted on the basis of whether the requisites of plea bargaining as stated in Section 2, Rule 116 of the Revised Rules on Criminal Procedure were dutifully complied with.

However, I respectfully ***offer a contrary view*** on the guidelines that the *Majority* states should be observed during the conduct of plea bargaining in drugs cases, as well as the rationale behind the said guidelines as provided by the *Majority*, as will be explained later.

At this stage, an exposition on the concept of plea bargaining is warranted.

I.

The Origin of Plea Bargaining in the United States

In the United States (US), plea bargaining refers to an "exchange of official concessions for a defendant's act of self-conviction;" such concessions may relate to the sentence to be imposed, the offense charged, or any other circumstance.[3]

The concept of plea bargaining, or at least evidence of its use, can be traced back to the nineteenth century.[4] Although its foundation exists in common law and not in statute, it was given express imprimatur by the

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1 See *ponencia*, p. 11.
2 See id. at 29 and 32.
3 Alschuler, Albert, "Plea Bargaining and Its History," Columbia Law Review, Vol. 79, No. 1, 1979, p. 3.
4 Alschuler, Albert, "Plea Bargaining and Its History," Columbia Law Review, Vol. 79, No. 1, 1979, p. 5.

Supreme Court of the United States (SCOTUS) in 1970 in the seminal case of *Brady v. United States* (*Brady*),[5] due to its practicality and expediency in the administration of justice. In the said case, the SCOTUS held:

> The issue we deal with is inherent in the criminal law and its administration because guilty pleas are not constitutionally forbidden, because the criminal law characteristically extends to judge or jury a range of choice in setting the sentence in individual cases, and **because both the State and the defendant often find it advantageous to preclude the possibility of the maximum penalty authorized by law. For a defendant** who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious – **his exposure is reduced,** the correctional processes can begin immediately, **and the practical burdens of a trial are eliminated. For the State,** there are also advantages – **the more promptly imposed punishment after an admission of guilt may more effectively attain the objectives of punishment**; and with the avoidance of trial, **scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilt or in which there is substantial doubt that the State can sustain its burden of proof.** It is this mutuality of advantage that perhaps explains the fact that at present well over three-fourths of the criminal convictions in this country rest on pleas of guilty, a great many of them no doubt motivated at least in part by the hope or assurance of a lesser penalty than might be imposed if there were a guilty verdict after a trial to judge or jury.[6] (Emphases supplied)

Since then, plea bargaining has become indispensable in the disposition of countless criminal cases, with an overwhelming majority of criminal cases being resolved by plea bargain in recent US history.[7] Although not causative of its rise in use in the US justice system, some scholars posit that the changing complexity of the jury trial system in the latter half of the 1900s, coupled with trial court judges' apprehension in conducting bench trials, *i.e.*, trials without a jury, for serious crimes led to the adoption of plea bargaining as the main method of resolution for criminal cases.[8] "Not only was the non[-]trial solution of plea bargaining more rapid than bench trial, it also protected the weak, elective American trial bench from the moral responsibility for adjudication and from the political liability of unpopular decisions. x x x easier, that is, for the judges to allow the prosecutor to wring out a plea concession than to bring themselves to insist on adjudication before condemnation."[9]

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5 397 U.S. 742 (1970); see also Alschuler, Albert, "Plea Bargaining and Its History," Columbia Law Review, Vol. 79, No. 1, 1979, p. 6.

6 397 U.S. 742 (1970), pp. 751-752.

7 Viano, Emilio C., *Plea Bargaining in the United States: A Perversion Of Justice*, Revue Internationale De Droit Pénal, vol. 83, no. 1-2, 2012, pp. 109-145. (https://www.cairn.info/revue-internationale-de-droit-penal-2012-1-page-109.htm last accessed on July 27, 2022)

8 Langbein, John H., *Understanding the Short History of Plea Bargaining*, Law & Society Review, vol. 13, no. 2, (Wiley, Law and Society Association), 1979, pp. 269-270. (https://www.jstor.org/stable/3053252 last accessed July 27, 2022)

9 Langbein, John H., *Understanding the Short History of Plea Bargaining*, Law & Society Review, vol. 13, no. 2, (Wiley, Law and Society Association), 1979, p. 270. (https://www.jstor.org/stable/3053252 last accessed on July 27, 2022).

However, plea bargaining is largely a ***contractual affair*** between prosecutors and defendants, subject to the ultimate approval of the trial court judge; any breach in the terms of the plea bargain, would allow the offended party to seek some form of relief from the court.[10]

In *Santobello v. New York* (*Santobello*),[11] the SCOTUS underscored the importance of honoring the promises made by the prosecutor to the defendant in securing the latter's plea of guilt:

> This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. **Those circumstances will vary, but a constant factor is that, when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.**
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> On this record, petitioner "bargained" and negotiated for a particular plea in order to secure dismissal of more serious charges, but also on condition that no sentence recommendation would be made by the prosecutor. It is now conceded that the promise to abstain from a recommendation was made, and at this stage the prosecution is not in a good position to argue that its inadvertent breach of agreement is immaterial. The staff lawyers in a prosecutor's office have the burden of "letting the left hand know what the right hand is doing" or has done. That the breach of agreement was inadvertent does not lessen its impact.
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> We need not reach the question whether the sentencing judge would or would not have been influenced had he known all the details of the negotiations for the plea. He stated that the prosecutor's recommendation did not influence him and we have no reason to doubt that. **Nevertheless, we conclude that the interests of justice and appropriate recognition of the duties of the prosecution in relation to promises made in the negotiation of pleas of guilty will be best served by remanding the case to the state courts for further consideration.** The ultimate relief to which petitioner is entitled we leave to the discretion of the state court, which is in a better position to decide whether the circumstances of this case require only that there be specific performance of the agreement on the plea, in which case petitioner should be resentenced by a different judge, or whether, in the view of the state court, the circumstances require granting the relief sought by petitioner, i.e., the opportunity to withdraw his plea of guilty. We emphasize that this is in no sense to question the fairness of the sentencing judge; the fault here rests on the prosecutor, not on the sentencing judge.[12] (Emphases supplied)

Arriving at some mutually accepted compromise between the State and the defendant is driven by the fact that both stand to gain and lose from plea

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[10] "Plea bargain," Legal Information Institute, Cornell Law School (https://www.law.cornell.edu/wex/plea_bargain last accessed July 27, 2022).

[11] 404 U.S. 257 (1971).

[12] 404 U.S. 257 (1971), pp. 262-263.

bargaining. The State loses the opportunity to convict a defendant for the crime actually committed, but allows them to secure a potential key witness for other crimes. ***It also allows them to achieve high conviction rates while shedding expense, uncertainty, and the opportunity costs of regular trials. They can then reallocate these resources to pursue more cases.*** On the other hand, the defendant sheds his presumption of innocence and his constitutionally guaranteed right to be heard and for the conduct of a trial, but instead gains leniency or a reduced sentence while avoiding the rigors and difficulties of going to trial.[13]

II.

Plea Bargaining in the Philippines

Under Philippine jurisdiction, plea bargaining is defined as "a process whereby the accused and the prosecution work out a ***mutually satisfactory disposition of the case*** subject to court approval."[14] It refers to the practice of allowing a defendant/accused to plead guilty to a lesser offense than the crime actually charged in the complaint or information, with the conformity of the offended party, the prosecution, and the trial court judge, in order to secure a lighter penalty.[15]

It is well to clarify, however, that plea bargaining is not a matter of right on the part of the accused. Case law instructs that "[n]o basic rights are infringed by trying [an accused] rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, ***which is a condition precedent*** to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that ***the prosecutor has full control of the prosecution of criminal actions***; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain."[16]

In this regard, it bears noting that there is no legislation that governs plea bargaining in the Philippines. On the other hand, plea bargaining is explicitly found in the rules of procedure duly promulgated by the Court,

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[13] Smith, Douglas A., *The Plea Bargaining Controversy*, The Journal of Criminal Law and Criminology, Vol. 77, No. 3, 1986. (https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6538&context=jclc last accessed July 27, 2022; and Alschuler, Albert W., *The Prosecutor's Role in Plea Bargaining*, University of Chicago Law Review, Volume 36, Iss. 1, Article 3, 1968. (https://chicagounbound.uchicago.edu/uclrev/vol36/iss1/3/ last accessed on July 27, 2022).

[14] *Republic v. Sandiganbayan*, G.R. Nos. 207340 and 207349, September 16, 2020. Emphasis and underscoring supplied.

[15] See Rule 116, Section 2 of the Rules of Court.

[16] See *People v. Reafor*, G.R. No. 247575, November 16, 2020; citations omitted. See also *People v. Villarama*, 285 Phil. 723 (1992); citations omitted.

particularly, Section 2, Rule 116 of the Revised Rules on Criminal Procedure, which reads:

> SECTION 2. *Plea of Guilty to a Lesser Offense.* – At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

Under this provision, "the basic requisites of plea bargaining are: (*a*) consent of the offended party; (*b*) consent of the prosecutor; (*c*) plea of guilty to a lesser offense which is necessarily included in the offense charged; and (*d*) approval of the court."[17]

Otherwise stated, ***a valid plea bargain requires the consent of both the offended party and the prosecutor***. However, it bears pointing out that any agreement regarding plea bargaining shall still undergo scrutiny by the trial court handling the criminal case, whose approval is necessary before any plea bargaining arrangement may validly push through.

It is respectfully submitted that the fact that there is no substantive law that relates to plea bargaining and that the same is found in prevailing rules of procedure ***does not necessarily mean that all aspects of plea bargaining are purely procedural in nature***, as what the *Majority* posits. In fact, the process of plea bargaining is where the two (2) great branches of government – the Executive Department and the Judicial Department – converge, where each has a significant, ***but separate***, role to play to advance the administration of justice.

As may be seen in the requisites of plea bargaining, aside from the accused and the private offended party in applicable instances (as there are crimes which have no private offended party) there are two (2) branches of government that are involved in a plea bargaining process, namely: (*a*) the Executive Department, represented by the prosecutor who is an agent of the DOJ, which in turn, acts as an alter-ego of the President – that consents to a guilty plea to a lesser offense by the accused; and (*b*) the Judicial Department, as represented by the trial court handling the criminal case – that approves or disapproves a plea bargaining arrangement agreed upon by the parties-litigants in a criminal case.

That said, and to further understand the interplay of Executive and Judicial powers insofar as plea bargaining is concerned, there is a need to

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[17] *Fernandez v. People*, G.R. No. 224708, October 2, 2019.

delineate the powers of these great departments in relation to the prosecution of criminal cases in general.

III.

The Interplay of Executive and Judicial Powers in Criminal Cases

Pursuant to Section 17, Article VII[18] of the 1987 Constitution which mandates the President – the bearer of Executive power – to "ensure that the laws [shall] be faithfully executed," it is the Executive Department that is tasked to uphold and enforce the law, and to ensure that all violators are brought to justice in order to uphold public order.

Necessarily, "the prosecution of crimes appertains to the [E]xecutive [D]epartment of government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators." [19]

It is thus elementary that "in criminal cases, the offended party is the State, and 'the purpose of the criminal action is to determine the penal liability of the accused for having outraged the State with his crime . . . In this sense, the parties to the action are the People of the Philippines and the accused. The offended party is regarded merely as a witness for the state.'"[20]

In recognition of this exercise of power by the Executive Department, Section 5, Rule 110 of the Revised Rules on Criminal Procedure, as amended by A.M. No. 02-2-07-SC, explicitly provides that "[a]ll criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor" – who as explained above, is an agent of the DOJ, and who, in turn, is considered an alter-ego of the ultimate wielder of Executive power, the President. Thus, the right to prosecute offenses ***properly belongs*** to the Executive Department. This "right to prosecute vests the prosecutor with a wide range of discretion – the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors."[21]

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[18] Section 17, Article VII of the Constitution reads:

> Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

[19] *People v. Peralta*, 435 Phil. 743 (2002), citing *Webb v. De Leon*, 317 Phil. 758 (1995). See also *People v. Benedictus*, 351 Phil. 560 (1998).

[20] *Montelibano v. Yap*, 822 Phil. 263, 273 (2017), citing *Bumatay v. Bumatay*, 809 Phil. 302 (2017).

[21] Id.

On the other hand, the courts exercise Judicial power which includes the power "to settle actual controversies involving rights which are legally demandable and enforceable"[22] and to "[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts[.]"[23] In criminal cases, Judicial power is exercised by the courts by directing the orderly conduct of proceedings, and in the process, ultimately resolving the case and all incidents pertaining thereto, such as but not limited to, the main task of determining whether or not the prosecution had established beyond reasonable doubt the guilt of the accused. At all times, the courts should act as ***an impartial tribunal*** that sees to it that all rules and procedures pertaining to the proper conduct of a trial are faithfully complied with, due process is accorded with both the prosecution and defense and that any judgment rendered in connection with the criminal case is in accordance with prevailing laws, rules, and jurisprudence.

Since the conduct of plea bargaining is but a mere component of a criminal case, ***its substantive aspects***, particularly, the determination of which offenses may be plea bargained and what may constitute as proper "lesser offenses" to which a plea bargain may be made in each particular case, as well as the prosecution's giving of consent to a plea bargaining proposal, which is an essential requisite to plea bargaining, ***are part and parcel of the prosecutorial power which rightfully belongs to the prosecutors of the Executive Department***.

Plainly, these substantive matters are ***matters of policy*** which ***should not be touched by the courts***. After all, it is the prosecutors and the DOJ in general, as agents of the State, who expend State resources in prosecuting violations of the duly enacted penal laws of the country. Thus, the prosecutors must be given the discretion to determine whether or not they will continue to pursue the prosecution of an offense as charged; or if they will just save on the State's resources by agreeing to a plea bargaining deal which will ensure a conviction, albeit for a lesser offense than what was charged. On the other hand, the courts, which stand as the representatives of the Judicial Department, are tasked to ensure that all the requisites of plea bargaining are dutifully complied with.

Lest I be misunderstood, I fully subscribe to the *Majority* that for every opportune time, the Court should reiterate and assert its exclusive and constitutional rule-making power. However, I respectfully submit that in plea bargaining cases, ***said exclusivity is wanting***. Plea bargaining process is not squarely a rule of procedure under the exclusive domain of the Court, but rather an interplay of the Executive power vis-à-vis Judicial power where the Court should not assert its sole dominance to the exclusion of the Executive. This is not a zero sum game.

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22 See Section 1, Article VIII of the Constitution.

23 See Section 5 (5), Article VIII of the Constitution.

IV.

The Contrary View

As mentioned earlier, I submit my contrary view on the guidelines and the rationale provided by the *Majority* on how courts should conduct plea bargaining in drugs cases. The guidelines provided in the *ponencia* are as follows:

> 4. As a rule, plea bargaining requires the mutual agreement of the parties and remains subject to the approval of the court. Regardless of the mutual agreement of the parties, the acceptance of the offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the court.
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> 5. The Court shall not allow plea bargaining if the objection to the plea bargaining is valid and supported by evidence to the effect that:
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> a. the offender is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or
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> b. where the evidence of guilt is strong.
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> 6. Plea bargaining in drugs cases shall not be allowed when the proposed plea bargain does not conform to the Court-issued Plea Bargaining Framework in Drugs Cases.
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> 7. Judges may overrule the objection of the prosecution if it is based solely on the ground that the accused's plea bargaining proposal is inconsistent with the acceptable plea bargain under any internal rules or guidelines of the DOJ, though in accordance with the plea bargaining framework issued by the Court, if any.[24]

As I see it, this set of guidelines of the *Majority* gives the trial courts ***uninhibited discretion*** in approving or denying plea bargaining proposals, which in turn, ***unduly oversteps*** on the authority of the Executive Department, more particularly, the DOJ – to prosecute crimes.

I thus respectfully opine that the plea bargaining process should be viewed in the following prism:

1) Plea bargaining is a process involving multiple parties, namely: (*a*) the accused who seeks to avail of the process; (*b*) the

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[24] See *ponencia*, pp. 30-31.

private offended party, in certain crimes, whose consent is indispensable to a valid plea bargaining agreement; (*c*) the handling prosecutor as representative of the DOJ – and in the bigger picture, as representative of the Executive Department – whose task is to prosecute offenses and whose consent is equally indispensable to a valid plea bargaining agreement; and (*d*) the trial court as representative of the Judicial Department, whose critical task is to ensure that all the requisites of a valid plea bargaining agreement under the Rules are present before approving the same.

2) If the accused wishes to plead guilty to a lesser offense, he should make his intentions known to the handling prosecutor, who in turn should determine whether plea bargaining is proper. In making such determination, the handling prosecutor should take into consideration, among other things: (*i*) whether the lesser offense to which the accused seeks to plead guilty to is necessarily included in the offense charged or determine the proper lesser charge to which the accused can plea; (*ii*) internal rules or guidelines within the DOJ that govern plea bargaining and the giving of consent to any plea bargaining agreement; *(iii)* whether the evidence of guilt is strong; and *(iv)* the conformity of the private offended party, in proper instances. Further, the handling prosecutor may also consider whether a plea bargaining agreement will serve the interests of justice if the accused is a recidivist, habitual offender, known in the community as a drug dealer and a troublemaker, had undergone rehabilitation but suffered a relapse, has been charged many times, or any other relevant and material situation, depending on the peculiar circumstances of each case.

3) If the handling prosecutor is not amenable to the offer to plea bargain, he should signify his refusal to give consent in writing. The accused and/or the offended party cannot compel the handling prosecutor to give such consent. However, they may elevate the matter of the handling prosecutor's refusal to give consent to the Prosecutor General/City/Provincial Prosecutor who exercises the power of control and supervision over such handling prosecutor, and later on, to the Secretary of Justice, pursuant to the doctrine of exhaustion of administrative remedies. If such refusal is sustained at the level of the Secretary of Justice, the accused may, if he/she so wishes, assail the same through an appeal to the Office of the President or petition for *certiorari* on the ground of grave abuse of discretion, whenever appropriate.

4) The refusal of the handling prosecutor all the way to the Secretary of Justice and the Office of the President to give the consent to a plea bargaining agreement does not empower the trial courts to overrule the same, in respect and deference to the DOJ's power to prosecute offenses which is purely an Executive function. The duty of the trial courts in such cases is to proceed to trial.

5) If the handling prosecutor, and the private offended party in proper cases, agree to the offer of the accused to plea bargain, they shall put their agreement in writing, *i.e.*, draft the plea bargaining agreement, and submit the same to the trial court where the case is pending for consideration.

6) Upon submission of the plea bargaining agreement, the trial court shall have the duty and responsibility to determine whether the plea bargaining agreement satisfies all the requisites for a valid plea bargaining agreement under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, including ascertaining whether there is indeed consent from the prosecutor and private offended party in proper cases, and whether their consent were voluntarily and intelligently given. It is also the duty and responsibility of the trial court to ensure that the accused fully understands and accepts the consequences of his plea to a lesser offense including the penalty thereof, as well as to determine whether the lesser offense which the accused shall plead guilty to is necessarily included in the offense charged. Again, owing to the constitutional doctrine of separation of powers and the express provision of Section 2, Rule 116 of the Revised Rules on Criminal Procedure, this is the critical function of the trial courts in the plea bargaining process, consistent with the principle that courts should act as impartial tribunals in the dispensation of justice.

7) If the court handling the criminal case determines that all requisites are dutifully complied with, then it shall approve the plea bargaining agreement, and promulgate a ruling convicting the accused of the lesser offense to which he pleaded guilty to. Otherwise, the court shall reject the plea bargaining agreement and continue with the trial.

V.

Disagreement with the Fourth, Fifth, Sixth, and Seventh Guidelines

Given the foregoing discussions, I now explain my disagreement with the fourth, fifth, sixth, and seventh guidelines, as provided in the *ponencia*.

To recall, the fourth guideline provides:

> 4. As a rule, plea bargaining requires the mutual agreement of the parties and remains subject to the approval of the court. Regardless of the mutual agreement of the parties, the acceptance of the offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed **entirely** to the sound discretion of the court.[25] (Emphasis and underscoring supplied)

Contrary to what the guideline states, the approval to plea bargain ***is not entirely dependent*** to the sound discretion of the court. To reiterate, plea bargaining involves an interplay of the great powers of the Executive and Judicial Departments. It is essentially a two (2)-step process:

> **First**, once the accused submits a plea bargaining proposal, it is up to the Executive Department, through the DOJ and its prosecutors, that wields prosecutorial power, to determine whether it should give its consent to the same; and
>
> **Second**, once the Executive Department (and the private offended party, in proper cases) gives its consent, it is now up to the Judicial Department to ensure and verify that all requisites for a valid plea bargaining agreement are present. If in the affirmative, then the courts should approve the plea bargaining agreement; otherwise, it should be rejected.

Thus, the first step involves the discretion of the Executive Department, whose discretion in giving or not giving its consent, should be respected by the court **as a co-equal body**. As already adverted to, the involvement of the Judicial Department in the plea bargaining process is only when the accused, the handling prosecutor, and the private offended party in proper cases, have mutually agreed on a plea bargaining agreement and the same is submitted to the court where the criminal case is pending for its approval or disapproval – which is encapsulated in the second step as above-described. Thus, the plea bargaining process is a shared responsibility of the Executive and Judicial Departments.

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[25] See id. at 30.

With respect to the fifth guideline, it reads:

> 5. The Court shall not allow plea bargaining if the objection to the plea bargaining is valid and supported by evidence to the effect that:
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> a) the offender is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or
>
> b) where the evidence of guilt is strong.[26]

It is respectfully submitted that the factors affecting the character of the accused, such as, if the accused is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but suffered a relapse, has been charged many times, when the evidence of guilt is strong, or any other relevant and material event or circumstance, should ***not be considered as automatic disqualifications*** on the part of the accused to avail the benefits of plea bargaining. This is for the Executive, through the handling prosecutor, to carefully evaluate and determine whether such factors may disqualify the accused from availing plea bargaining. Considering that the right to prosecute belongs to the Executive Department, the prosecution must be given a ***wide range of discretion*** – the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors."[27]

Anent the sixth and seventh guidelines, they respectively read:

> 6. Plea bargaining in drugs cases shall not be allowed when the proposed plea bargain does not conform to the Court-issued Plea Bargaining Framework in Drugs Cases.
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> 7. Judges may overrule the objection of the prosecution if it is based solely on the ground that the accused's plea bargaining proposal is inconsistent with the acceptable plea bargain under any internal rules or guidelines of the DOJ, though in accordance with the plea bargaining framework issued by the Court, if any.[28]

As also discussed above, the determination of which offenses may be plea bargained and what may constitute as "lesser offenses" to which a plea bargain may be made, as well as the giving of consent to a plea bargaining on the part of the prosecutor, are ***substantive aspects*** of plea bargaining. These are necessarily part and parcel of the prosecutorial power which rightfully belongs to the prosecutors of the Executive Department, which in turn represents the State – and the People of the Philippines for that matter. Thus, the courts ***should not be allowed to overrule the objections*** of the prosecution

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[26] See id. at 31.
[27] *Montelibano v. Yap*, supra note 20.
[28] See *ponencia*, p. 31.

to any plea bargaining proposal of the accused or ***to disapprove any plea bargaining agreement*** if all the requisites of plea bargaining under the Rules are present, including in drugs cases. For the Court to allow this to happen is tantamount to the authorization of an undue and dangerous intrusion into the powers of the Executive Department.

It bears reiterating that the role of the Judicial Department in a criminal case is not to champion the cause of the State and the People of the Philippines – its critical role is ***justly limited to being an impartial tribunal*** that ensures the orderly conduct of proceedings and to adjudicate in accordance with prevailing laws, rules, and jurisprudence.

Thus, the Judicial Department should not arrogate upon itself the substantive power to determine what is an acceptable "lesser offense" to which the accused may plead guilty to in lieu of the original charge against him/her, and to approve the plea bargaining proposal over the objections of the prosecutors or to disapprove the plea bargaining agreement notwithstanding the presence of all the requisites of plea bargaining as contained in Section 2, Rule 116 of the Revised Rules on Criminal Procedure. If allowed to do so, the trial courts will effectively supplant the wisdom of the Executive Department in the prosecution of criminal cases, a responsibility imposed upon it by no less than the Constitution, thereby resulting in an impermissible overreach into the realm of the Executive Department.

For these reasons, and after a circumspect reflection, I respectfully submit that it now appears that the Court's very own plea bargaining framework for drugs cases, *i.e.*, A.M. No. 18-03-16-SC, may have unduly overstepped into the boundaries of Executive power insofar as it provided, among others, a determination as to which violations of RA 9165 may be subject to plea bargaining, including the corresponding lesser offense to which the accused may plead guilty to.

At this juncture, it is acknowledged that the guidelines provided in this case were explicitly made applicable only to plea bargaining in drugs cases. However, I respectfully opine that the *Majority*'s resolution of this case might present a dangerous precedent for the court ***to intrude into substantive matters of plea bargaining of other crimes***, which to again reiterate, are purely within the domain of the Executive Department – under the mistaken notion that all aspects of plea bargaining are purely procedural in nature, particularly in the light of the explicit pronouncement in the *ponencia* that ***any plea bargaining framework that the Court may promulgate should be accorded primacy.*** [29] With all due respect, this should not be countenanced as it is unconstitutional.

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[29] See *ponencia*, p. 20.

The foregoing disquisition notwithstanding, I fully agree with the *ponencia*, insofar as it orders the remand of the criminal cases against Montierro and Baldadera to the respective courts of origin for further proceedings because said courts approved their respective plea bargaining proposals over the objections of the prosecution. Particularly, the respective courts of origin should be tasked to determine whether or not the prosecution in those cases still have any objections to the plea bargaining proposals of Montierro and Baldadera, taking into consideration the recent issuance of DOJ Circular No. 18 and in the event the prosecution and Montierro and Baldadera would enter into plea bargaining agreements, for the trial courts to determine the presence of all the requisites of plea bargaining on said agreement under the Rules, and pass judgment accordingly.

ACCORDINGLY, I vote to **REMAND** the criminal cases against Montierro and Baldadera.

ANTONIO T. KHO, JR.
Associate Justice

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court