

EN BANC

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

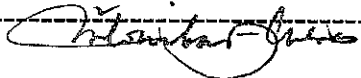
G.R. No. 254974 – CYPHER BALDADERA y PELAGIO, *petitioner*, v. PEOPLE OF THE PHILIPPINES, *respondent*.

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 – RE: 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 OPINION

LEONEN, J.:

While I concur with the *ponencia* in setting aside the judgments of conviction and remanding the cases to the courts of origin, I humbly disagree with the reasons set forth. I offer the following views and observations.

I

Article VII, Section 17 of the Constitution tasks the President with the right and duty to ensure the faithful execution of laws.¹ An integral part of this mandate is the prosecution of criminal violators through the prosecutor, who represents the Executive department in the prosecution of criminal cases.

On the other hand, judicial power involves the duty to settle actual controversies and determine whether any branch or instrumentality of the

¹ Article VII, Section 17 of the Constitution states: The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.



State has acted with grave abuse of discretion.² Concomitant to the judicial power is the power to promulgate rules, as provided in Article VIII, Section 5(5) of the Constitution, which reads:

Section 5. The Supreme Court shall have the following powers:

.....

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Plea bargaining is a rule of procedure which falls within this Court's exclusive rule-making power. It is the process where both the accused and the prosecution agree to "a mutually satisfactory disposition of the case subject to court approval."³ The plea bargaining process is provided for in Rule 116, Section 2 of the Rules of Court:

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.

Rule 118, Section 1(a) of the Rules of Court also mandates the courts to consider plea bargaining during pre-trial:

SECTION 1. *Pre-trial; mandatory in criminal cases.* – In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall[,] after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) *plea bargaining;*
- (b) *stipulation of facts;*
- (c) *marking for identification of evidence of the parties;*
- (d) *waiver of objections to admissibility of evidence;*

² CONST., art. VIII, sec. 1.

³ *People v. Villarama, Jr.*, 285 Phil. 723, 730 (1992) [Per J. Medialdea, First Division] citing Black's Law Dictionary, 5th Ed. (1979), p. 1037.

- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case. (Emphasis supplied)

While it is part of criminal procedure, the plea bargaining process requires the participation of two different branches of government, particularly the Judiciary and the Executive. The prosecutor represents the State in prosecuting the criminal case, while the trial court conducts the criminal proceedings. Considering the different functions involved, it is imperative to delineate the powers that each branch may exercise in the plea bargaining process to prevent a violation of the doctrine of separation of powers.

The power to prosecute exclusively lies with the prosecutor who possesses a wide discretion as regards “whether, what[,] and whom to charge”⁴ in recognition of the myriad of factors to consider when pursuing a criminal case.⁵ Jurisdiction over a criminal case is transferred to the court once the prosecutor files the information with the trial court. However, court action generally only pertains to the remedial measures that may crop up during the course of the trial.⁶ The prosecutor, as the State’s representative, still directly steers the criminal case since “[a]ll criminal actions commenced by a complaint or by information shall be prosecuted under the direction and control of a public prosecutor.”⁷

In turn, the trial court ensures that the plea bargain agreed upon by the parties conforms with the rules and guidelines issued by the Court. Hence, the substantive aspect of the plea bargaining process (*i.e.*, whether the accused will offer a plea bargain and whether the prosecutor will accept) is outside of the trial court’s mandate as this no longer pertains to the procedural aspect.

It should be noted that the Rules of Court does not direct the prosecutor to consent to a plea deal. Instead, it tasks the courts to exercise its discretion after the prosecution assents to the offered plea.⁸ Nothing in the provision implies that the court can override the mutual agreement of the parties or the lack thereof, in case the prosecutor does not agree with the proposed plea bargain. The court can only facilitate and ensure that all legal requirements have been met, as was pointed out in a separate opinion in *Sayre v. Xenos*:⁹

⁴ *Webb v. De Leon*, 317 Phil 758, 800 (1995) [Per J. Puno, Second Division].

⁵ *Id.*

⁶ *Rural Bank of Mabitac, Laguna, Inc. v. Canicon*, 834 Phil. 346, 365 (2018) [Per J. Jardeleza, First Division].

⁷ RULES OF COURT, Rule 110, sec. 5, as amended by A.M. No. 02-02-07-SC.

⁸ J. Leonen, Concurring Opinion in *Sayre v. Xenos*, G.R. No. 244413, February 18, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66133>> [Per J. Carandang, En Banc].

⁹ G.R. No. 244413, February 18, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66133>> [Per J. Carandang, En Banc].

A plain reading of [Rule 116, Section 2 of the Rules of Court] shows only one (1) part of the plea bargaining process: the plea of the lesser offense before the court. This presupposes that the courts only participate in the plea bargaining process once the accused has presented [their] offer and the prosecution and the private offended party has consented to the offer.

....

The mandate *to consider* plea bargaining after arraignment does not necessarily mean that the accused must always plead guilty to the lesser offense in all criminal cases. It simply means that if the accused and the prosecution come to court with a plea bargain deal during pre-trial, the court must consider the plea bargain deal.

*There is, thus, a part of the plea bargaining process that is solely within the realm of prosecutorial discretion.*¹⁰ (Emphasis supplied)

This is a tacit recognition of the separation of powers between the Executive and the Judiciary.

Estipona v. Lobrigo,¹¹ which categorically stated that plea bargaining “as a rule and a practice”¹² has always been a part of our rules of procedure, likewise emphasized judicial deference of prosecutorial discretion in the plea bargaining process:

Yet a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him 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.

[Courts] normally must defer to prosecutorial decisions as to whom to prosecute. The reasons for judicial deference are well known. Prosecutorial charging decisions are rarely simple. In addition to assessing the strength and importance of a case, prosecutors also must consider other tangible and intangible factors, such as government enforcement priorities. Finally, they also must decide how best to allocate the scarce resources of a criminal justice system that simply cannot accommodate the litigation of every serious criminal charge. Because these decisions “are not readily susceptible to the kind of analysis the courts are

¹⁰ J. Leonen, Concurring Opinion in *Sayre v. Xenos*, G.R. No. 244413, February 18, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66133>> [Per J. Carandang, En Banc].

¹¹ 816 Phil 789 (2017) [Per J. Peralta, En Banc].

¹² *Id.* at 806.

competent to undertake,” we have been “properly hesitant to examine the decision whether to prosecute.”¹³ (Citations omitted)

Clearly then, a plea bargain requires the mutual agreement of the accused, offended party, and prosecutor, as well as the court’s approval of the agreement. Hence, the court cannot approve a plea bargain despite the prosecutor’s continuing objection because this would encroach upon the separation of powers between the Judiciary and the Executive.

Courts likewise cannot disregard the prosecutor’s objection to a plea bargain based on the ground that it does not meet the Executive’s framework in drugs cases. The establishment of an Executive framework in drugs cases, as a response to the government’s war against drugs, is well-within the Executive’s right to prosecute criminal violators and cannot be seen as a whimsical and capricious act which can be struck down.

To reiterate, the court’s authority over the plea bargaining process is limited to the procedural aspect. The court’s consent comes into play only after the parties have come to a mutual agreement on the proffered plea bargain. Its consent is not needed to validate the plea bargain reached; instead, the court is merely tasked to ensure that all legal requirements were met, with the parties’ mutual agreement. Enlarging the court’s authority under the guise of its rule-making power to also include the power to overrule the prosecution’s objection to the proposed plea bargain is tantamount to a violation of the doctrine of separation of powers.

II

I concur with the *ponencia*’s observation¹⁴ that the issuance of Department of Justice (DOJ) Circular No. 18 on May 10, 2022, which amended DOJ Circular No. 27 issued in 2018, has rendered the prosecution’s continuing objections to Erick Montierro and Cypher Baldadera’s plea bargaining proposals moot. The plea bargaining proposals of both accused were based solely on the DOJ Circular No. 27. Nonetheless, as the case is capable of repetition since the Department of Justice might revert to its DOJ Circular No. 27 or issue something similar in the future, this case falls under the recognized exceptions¹⁵ to the general rule that the Court cannot take cognizance of a case that has become moot. Resolving the case will likewise address the issues raised by the Philippine Judges Association.

¹³ Id. at 814–815.

¹⁴ *Ponencia*, pp. 10–11.

¹⁵ *Republic v. Moldex Realty, Inc.*, 780 Phil 553, 561 (2016) [Per J. Leonen, Second Division].

Further, the withdrawal of the prosecution's continuing objection based on DOJ Circular No. 27 does not necessarily mean that the prosecution automatically agrees to the accused's original proposed plea bargain deal, as there might still be other grounds for the prosecution to reject the proposal, or the prosecution might present a counter-proposal. Thus, there is a need to remand the cases to their respective courts of origin to determine if the parties are indeed inclined to enter into a plea bargaining agreement.


ACCORDINGLY, I vote that the July 1, 2020 Decision and November 26, 2020 Resolution of the Court of Appeals in CA-G.R. SP No. 158032, as well as the February 27, 2020 Decision and October 7, 2020 Resolution of the Court of Appeals in CA-G.R. SP No. 158301 be **SET ASIDE**.

Further, I also vote that the respective cases of Erick Montierro y Ventocilla and Cypher Baldadera y Pelagio be **REMANDED** to the courts of origin to determine if the parties intend to enter into a plea bargain.



MARVIC M.V.F. LEONEN
Senior Associate Justice

CERTIFIED TRUE COPY



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