SECOND DIVISION

G.R. No. 258894 – GLEN ORDA *y* LOYOLA, *Petitioner* **v. PEOPLE OF THE PHILIPPINES**, *Respondent.*

Promulgated:

JAN 30 2023

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CONCURRING AND DISSENTING OPINION

KHO, JR., *J.*:

I concur in the *ponencia* insofar as it remands the case to the court of origin to determine petitioner Glen Orda *y* Loyola's (petitioner) entitlement to avail of the benefits of plea bargaining. I also concur in the *ponencia*'s disquisition[1] that pursuant to the Court *En Banc*'s ruling in *People v. Montierro*[2] (*Montierro*), the prosecution's objection in this case — which was based on Department of Justice (DOJ) Circular No. 27, S. 2018[3] — is deemed withdrawn by the fact of enactment of DOJ Circular No. 18, S. 2022.[4]

To recall, in *Montierro*, the Court *En Banc*, speaking through Associate Justice Alfredo Benjamin S. Caguioa, took judicial notice that on May 10, 2022, the DOJ issued DOJ Circular No. 18, which explicitly revoked the earlier-issued DOJ Circular No. 27, S. 2018 (and in effect, includes the revocation of the DOJ Circular No. 61 as well). A salient feature of DOJ Circular No. 18, S. 2022 is that the DOJ aligned its plea bargaining framework with that of the Court, *i.e.*, A.M. No. 18-03-16-SC. Recognizing this recent development, the Court *En Banc* categorically ruled that "[w]ith the amendments introduced in DOJ Circular No. 18, [S. 2022,] the prosecution's objection to [therein accused's] plea bargaining proposals, which was based solely on DOJ Circular No. 27, [S. 2018,] can now be considered as effectively withdrawn."[5]

This notwithstanding, the Court *En Banc* ruled that the trial courts should not have hastily approved therein accused's plea bargaining proposals over the objection of the prosecution. Rather, the trial courts should have first

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1 See *ponencia*, p. 8.

2 G.R. Nos. 254564 and 254974, and A.M. Nos. 21-07-16-SC and 18-03-16-SC, July 26, 2022 [Per J. Caguioa, *En Banc*].

3 Entitled "AMENDED GUIDELINES ON PLEA BARGAINING FOR REPUBLIC ACT NO. 9165 OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" dated June 26, 2018.

4 Entitled "REVISED AMENDED GUIDELINES ON PLEA BARGAINING FOR REPUBLIC ACT NO. 9165 OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" dated May 10, 2022.

5 See *People v. Montierro*, supra. See also *ponencia*, p. 8.

resolved the objection of the prosecution before approving such proposals, which resolution includes a determination of: (*a*) whether the evidence of guilt against therein accused is strong; and (*b*) whether therein accused are recidivists, habitual offenders, are known in the community as drug addicts and troublemakers, have undergone rehabilitation but suffered relapses, or have been charged many times. The Court *En Banc* further instructed that the presence of any of these circumstances would bar therein accused from availing of the benefits of entering into a plea bargain with the State. Given the foregoing, the Court *En Banç* concluded that the criminal cases against therein accused should be remanded to the court of origin to afford the latter an opportunity to determine whether or not therein accused are qualified to avail of the benefits of plea bargaining.[6]

However, I tender my dissent in the *ponencia* insofar as it directs the court of origin to "determine the qualification of [petitioner] based on the [*Montierro* guidelines], and thereafter, resolve anew his plea bargaining proposals."[7] In this regard, I find it *apropos* to reiterate my Separate Concurring and Dissenting Opinion in *Montierro* where I explained that the guidelines provided by the majority in *Montierro* "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."[8]

Pertinent portions of my Opinion in *Montierro*, which essentially posit that ***the plea bargaining process is not a purely procedural function within the realm of the Judiciary as it is, in fact, an interplay of the powers of the Judiciary and the Executive***, read as follows:

> **IV.**
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> **The Contrary View**
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> ***I thus respectfully opine that the plea bargaining process should be viewed in the following prism:***
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> > 1) Plea bargaining is a process involving multiple parties, namely: (*a*) the accused who seeks to avail of the process; (*b*) the 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

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6 See *People v. Montierro*, id.

7 See *ponencia*, p. 12.

8 See page 9 of my Separate Concurring and Dissenting Opinion in *People v. Montierro*, supra.

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.
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> 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.[9] (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:

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9 See *People v. Montierro*, supra note 1.

> **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
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> **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.

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.[10]

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.[11]

Anent the sixth and seventh guidelines, they respectively read:

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10 See id. at 31.

11 *Montelibano v. Yap*, 822 Phil. 262, 273 (2017) [Per J. Martires, Third Division], citing *Bumatay v. Bumatay*, 809 Phil. 302 (2017) [Per J. Caguioa, First Division].

> 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.[12]

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 objection*** of the prosecution 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

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12 See *People v. Montierro*, supra note 1.

> 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.***[13] With all due respect, this should not be countenanced as it is unconstitutional.
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> 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[, S. 2022] 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.

Thus, and in light of my position in *Montierro*, it is humbly opined that the *ponencia* should have limited the ruling in this case to the following: ***first***, the prosecution's objection to petitioner's plea bargaining proposal — which is solely based on DOJ Circular No. 27, S. 2018 — is considered as effectively withdrawn in light of the issuance of DOJ Circular No. 18, S. 2022; and ***second***, the instant case is remanded to the RTC in order to give the latter court the opportunity to ascertain whether or not petitioner is qualified to avail of the benefits of plea bargaining, pursuant to the plea bargaining process stated in my opinion in *Montierro* and quoted above.

ACCORDINGLY, I **VOTE** to **REMAND** Criminal Case Nos. C-87-16, C-88-16, and C-89-16 to the Regional Trial Court of Roxas City, Branch 16 to ascertain whether or not petitioner Glen Orda *y* Loyola is entitled to the benefits of plea bargaining.

ANTONIO T. KHO, JR.
Associate Justice

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13 See *People v. Montierro*, id.