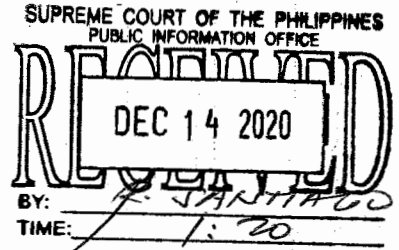




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated August 26, 2020, which reads as follows:

“G.R. No. 228882 (*People of the Philippines v. Francisco Siddayao, Jr.*). – Before Us is a Motion for Reconsideration¹ of Our Resolution² dated July 22, 2019 dismissing accused-appellant Francisco Siddayao, Jr.’s (Siddayao, Jr.) appeal and affirming the Decision³ dated May 24, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 0-6840. The CA affirmed the Decision⁴ dated May 8, 2014 of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan, Branch 5 in Criminal Case No. 13222, but increased the fine imposed to ₱500,000.00. The dispositive portion of the Decision of the RTC provides:

WHEREFORE, the Court renders judgment finding the accused, FRANCISCO SIDDAYAO, JR., GUILTY beyond reasonable doubt of violating Sec. 5, 1st paragraph of Art. II, R.A. No. 9165 and sentences him, in accordance with law to suffer imprisonment of Life Imprisonment and to pay a fine in the amount of four hundred thousand (P400,000.00) pesos.

The confiscated drugs are hereby forfeited in favor of the government. The Clerk of Court is hereby ordered to turn over the confiscated drugs to the Philippine Drug Enforcement Agency (PDEA) for their disposition in accordance with law together with a copy of this judgment.

SO ORDERED.⁵

Siddayao, Jr. was charged with violation of Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” in an Information⁶ dated October 27, 2009:

¹ Rollo, pp. 40-48.

² Id. at 39.

³ Penned by Associate Justice Marie Christine Azcarraga-Jacob, with the concurrence of Associate Justices Ricardo R. Rosario and Edwin D. Sorongon; id. at 2-13.

⁴ Penned by Judge Jezarene C. Aquino; CA rollo, pp. 41-51.

⁵ Id. at 51.

⁶ Records, p. 1.

That on or about October 26, 2009, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused FRANCISCO SIDDAYAO, JR. y GUMANGAN alias "JUN", without authority of law and without any permit to sell, transport, deliver, and distribute dangerous drugs, did then and there, willfully, unlawfully, and feloniously, sell, and distribute two (2) pcs. heat-sealed transparent plastic sachets each containing 0.05 grams and 0.03 grams or a total of 0.08 grams of METHAMPHETAMINE HYDROCHLORIDE, commonly known as "shabu", a dangerous drug to IO1 JOHNNY A. SUMALAG, who acted as a poseur buyer; that when the accused received the four (4) pieces P500.00 peso-bills bearing Serial Nos. KR 637530, XX 069013, CF 814888, and NP 633557 marked money from the said poseur buyer, he in turn handed the two (2) pcs. heat-sealed plastic sachet containing the dangerous drug to the former and this led to the apprehension of the accused and the confiscation of the dangerous drug and the buy-bust money along Caritan Norte, Tuguegarao City, by members of the Philippine Drug Enforcement Agency (PDEA), Regional Office NO. 02, Camp Adduru, this City, who formed the buy-bust team.

CONTRARY TO LAW.⁷

The witnesses for the prosecution testified that at 8:30 a.m. on October 26, 2009, the confidential informant (CI) called SO2 Romarico Pagulayan (SO2 Pagulayan) of the Philippine Drug Enforcement Agency (PDEA) and told him that a certain "Jun" of Barangay Caggay, Tuguegarao City, Cagayan was engaged in selling methamphetamine hydrochloride or *shabu*, a dangerous drug. According to the CI, he told "Jun" that someone wanted to purchase ₱2,000.00 worth of *shabu*.⁸ SO2 Pagulayan relayed the information to Officer-In-Charge PCI Primitivo Bayongan who then instructed him to form a team to conduct a buy-bust operation.⁹

SO2 Pagulayan formed a buy-bust team composed of himself as the team leader, IO1 Johnny Sumalag (IO1 Sumalag) as the *poseur*-buyer, IO2 Joseph Sacolles (IO2 Sacolles) as the arresting officer, and IO3 Giovanni Alan (IO3 Alan), IO1 Maynard Adriano, IO1 Melanie Gorospe (IO1 Gorospe), and IO1 Job Geronilla as the back-up.¹⁰ SO2 Pagulayan prepared four ₱500.00 bills as buy-bust money.¹¹

The team left for Caritan Norte at 10:00 a.m. Upon arrival, they surveyed and inspected the area. Afterwards, SO2 Pagulayan instructed the CI to call "Jun" using his cellphone and inform him that the buyer was at the agreed place of the transaction. "Jun" told him to wait for his text message.

7

Id.

8

Rollo, p. 4.

9

CA *rollo*, p. 42.

10

Rollo, p. 4.

11

TSN dated March 16, 2011, p. 26.

At 11:00 A.M., “Jun” arrived on a motorcycle. The CI introduced IO1 Sumalag to him as the buyer. After negotiating for a few minutes,¹² “Jun” gave two (2) plastic sachets containing white crystalline substance to IO1 Sumalag who then gave the buy-bust money to “Jun.”¹³ IO1 Sumalag checked if the substance was *shabu*. Once he confirmed that it was, he executed their pre-arranged signal of removing his cap to signify the consummation of the sale.¹⁴

IO1 Sumalag introduced himself as a PDEA agent to “Jun” while the rest of buy-bust team approached them. IO1 Sacolles arrested “Jun” and IO1 Sumalag frisked and handcuffed him.¹⁵ The buy-bust money¹⁶ and a cellphone¹⁷ were recovered from “Jun.” SO2 Pagulayan informed “Jun” of his rights under the law.¹⁸¹⁹ “Jun” and the seized items were brought to the Barangay Hall of Caritan Norte.²⁰

At the Barangay Hall, IO1 Sumalag marked the two (2) sachets with his initials “JAS”²¹ as well as the date of the incident, October 26, 2009.²² An inventory of the seized items was conducted in the presence of Brgy. Chairman Eduardo Celestino (Brgy. Chairman Celestino), Barangay Kagawad Samuel Ventura (Brgy. Kgw. Ventura), and media representative Aldrin Bangayan (Bangayan).²³ IO1 Meynard Agleham took photos during the inventory.²⁴ “Jun” was identified as Siddayao, Jr..²⁵

Thereafter, the buy-bust team brought Siddayao, Jr. and the confiscated items to their Regional Office.²⁶ IO3 Alan prepared the letter-request²⁷ for the laboratory examination of the contents of the two (2) confiscated plastic sachets and the letter-request for Siddayao, Jr.’s examination.²⁸ SO2 Pagulayan signed the letter-requests.²⁹ IO1 Sumalag brought the letter-request and the seized items to the Regional Crime Laboratory where it was received by P/C Inspector Alfredo Quintero (PCI Quintero). PCI Quintero examined the contents of the sachets and found that they contain methamphetamine hydrochloride.³⁰ His findings are contained in Chemistry Report No. D-27-2009.³¹ After his examination, he resealed the sachets with masking tape and marked it with his initials “AMQ” and the date of the examination, October

¹² CA *rollo*, p. 43.

¹³ *Rollo*, pp. 4-5.

¹⁴ CA *rollo*, p. 43.

¹⁵ *Id.*

¹⁶ Records, p. 29.

¹⁷ *Id.*

¹⁸ CA *rollo*, p. 43.

¹⁹ TSN dated December 9, 2010, p. 27.

²⁰ *Rollo*, p. 5.

²¹ Records, p. 29.

²² *Id.*

²³ *Rollo*, p. 5.

²⁴ TSN dated December 9, 2010, p. 22.

²⁵ *Rollo*, p. 5.

²⁶ CA *rollo*, p. 44.

²⁷ Records, p. 16-17.

²⁸ TSN dated August 3, 2011, p. 13.

²⁹ *Id.*

³⁰ *Rollo*, p. 5.

³¹ Records, p. 18.

26, 2009.³² PCI Quintero turned over the specimens and Chemistry Report D-27-2009 to evidence custodian SPO4 Vicente Laguitao (SPO4 Laguitao).³³

Sidayao, Jr. was charged with violation of Section 5, Article II of R.A. 9165. He pleaded not guilty during his arraignment on November 5, 2009.³⁴

Sidayao, Jr. testified that on October 26, 2009, his friend, Anet Gumabay (Gumabay), called him at 8:30 a.m. looking for a carpenter that could do some works in her home.³⁵ He went to his neighbor, who was a carpenter, but the latter was not at home. Gumabay called Sidayao, Jr. again and instructed him to go to her house at 10:00 a.m. to look at the works to be done. Sidayao, Jr. went as agreed upon and parked his motorcycle near Gumabay's house. However, two (2) armed men in civilian clothing grabbed him. He resisted and asked them what he did wrong. They responded that he should just go with them because they needed to ask him something. Sidayao, Jr. was then handcuffed and brought to the PDEA Office where they repeatedly asked him about a person unknown to him. When he said that he did know the name of person they were looking for, they threatened to detain him. At 2:00 p.m., Sidayao, Jr. was brought to the Barangay Hall of Caritan Norte where the personnel from PDEA informed the Barangay Captain and a Barangay Kagawad that they arrested someone in the Barangay.³⁶

Sidayao, Jr. said that he did not know the PDEA agents prior to October 26, 2009. He opined that they might have arrested him because he was previously charged with violation of Section 5, Article II of R.A. 9165. However, he had been acquitted of that charge. He did not file a case against the PDEA agents but may do so after he is released.³⁷

The prosecution presented IO1 Sumalag, SO2 Pagulayan, PCI Quintero, Brgy. Chairman Celestino,³⁸ IO1 Sacolles,³⁹ and IO3 Alan.⁴⁰ In lieu of his testimony, the parties stipulated that the testimony of Brgy. Kgw. Ventura is the same as that of Brgy. Chairman Celestino.⁴¹ Sidayao, Jr. was the sole witness for the defense.⁴²

On May 8, 2014, the RTC rendered its Decision⁴³ finding Sidayao, Jr. guilty beyond reasonable doubt of the crime charged. The RTC sentenced him to suffer the penalty of life imprisonment and pay a fine amounting to

³² CA *rollo*, pp. 44-45.

³³ Id. at 45.

³⁴ Records, p. 55.

³⁵ *Rollo*, pp. 5-6.

³⁶ Id. at 6.

³⁷ CA *rollo*, p. 46.

³⁸ Id. at 42.

³⁹ See TSN dated December 9, 2010.

⁴⁰ See TSN dated August 3, 2011.

⁴¹ Records, p. 132.

⁴² Id. at 45.

⁴³ CA *rollo*, pp. 41-51.

₱400,000.00.⁴⁴ The RTC was convinced that the evidence of plaintiff-appellee sufficiently proved that Siddayao, Jr. is guilty of violating Section 5, Article II of R.A. 9165.⁴⁵ Based on the testimonies of plaintiff-appellee's witnesses, Siddayao, Jr. gave two (2) sachets of *shabu* to IO1 Sumalag, who then paid him ₱2,000.00.⁴⁶ Siddayao, Jr. did not show any ill motive on the part of the PDEA agents or allege that they tried to extort money from him. He did not report the supposed illegality of his arrest even when the Barangay officials were in his presence.⁴⁷ He did not execute a counter-affidavit.⁴⁸

The RTC ruled that the chain of custody of the seized drug specimens was also established in this case.⁴⁹ The seized drug specimens were marked. Brgy. Chairman Celestino, Brgy. Kgw. Ventura, and Bangayan were present during the inventory of the items and photographs of the proceedings were taken. IO1 Sumalag turned over the specimens to PCI Quintero. After conducting the examination on the specimens, PCI Quintero resealed its containers and turned it over to SPO4 Laguitao. Siddayao, Jr. failed to prove that the evidence was planted or substituted.⁵⁰

Siddayao, Jr. appealed to the CA. The CA denied his appeal in its Decision dated May 24, 2016.⁵¹ *First*, the CA ruled that plaintiff-appellee was able to prove the elements of Section 5 of R.A. 9165 through the testimonies of its witnesses.⁵² Any purported inconsistencies were minor and trivial. Siddayao, Jr. also failed to show that the PDEA agents were motivated by bad faith or ill-will.⁵³ *Second*, the CA held that the integrity of the specimens in this case was maintained. The seized items were immediately marked in the presence of Siddayao, Jr. based on the testimony of IO1 Sumalag. An inventory thereof was made in the presence of Brgy. Chairman Celestino, Brgy. Kgw. Ventura, and Bangayan, and photographs were taken. IO1 Sumalag personally delivered the items to PCI Quintero who examined it and found that it tested positive for methamphetamine hydrochloride. IO1 Sumalag identified the seized drug in court.⁵⁴ *Third*, the CA increased the fine imposed against Siddayao, Jr. to ₱500,000.00 so that it may conform with sR.A. 9165.⁵⁵

Siddayao, Jr. appealed to this Court. Both parties in this case manifested that they will no longer file a supplemental brief.⁵⁶ In Our Resolution dated July 22, 2019,⁵⁷ We dismissed Siddayao, Jr.'s appeal for failure to sufficiently

⁴⁴ Id.
⁴⁵ Id. at 51.
⁴⁶ Id. at 49.
⁴⁷ Id. at 50.
⁴⁸ Id. at 51.
⁴⁹ Id. at 50.
⁵⁰ Id. at 49-50.
⁵¹ Supra note 3.
⁵² *Rollo*, pp. 7-8.
⁵³ Id. at 11.
⁵⁴ Id. at 9-11.
⁵⁵ Id. at 12.
⁵⁶ Id. at 21-23, 26-28.
⁵⁷ Id. at 39.

show that the CA committed any reversible error in its Decision. Siddayao, Jr. filed a motion for reconsideration.

Siddayao, Jr. assailed the non-observance of the requirements under Section 21 of R.A. 9165 and its Implementing Rules and Regulations (IRR) in this case. The seized items were not immediately marked at the place of arrest and in the presence of Siddayao, Jr. He emphasized the need to comply with the requirements of the law and the duty of the arresting officers to justify any deviation and show that earnest efforts were made to comply with the law. Otherwise, conviction cannot be sustained due to doubts on the identity of the seized drug. Further, Siddayao Jr.'s denial should have been given more consideration by the CA. The overriding concern of the courts should not be whether or not it doubts the innocence of the accused but whether there exists reasonable doubt if he or she is guilty. As such, Siddayao, Jr. prays for his acquittal.⁵⁸

Plaintiff-appellee argued that *first*, marking need not be done at the crime scene pursuant to Section 21 of the IRR of R.A. 9165.⁵⁹ *Second*, the seized items were marked in Siddayao, Jr.'s presence, as attested to by IO1 Sumalag.⁶⁰ *Third*, the inconsistencies pointed out by Siddayao, Jr. in the testimonies of plaintiff-appellee's witnesses were duly clarified. IO1 Sumalag explained that the reason why he initially said that one of the sachets was recovered after frisking Siddayao, Jr. was because he was nervous. After all, it was his first time to testify. It was also clarified that IO3 Alan merely oversaw the preparation of the inventory of the seized items but did not receive the seized items from IO1 Gorospe. As for IO1 Gorospe, she only assisted IO1 Sacolles in preparing the exhibits. These alleged inconsistencies do not affect the elements of Section 5 of R.A. 9165. Moreover, they are badges of truth. In any case, the assessment of the credibility of the witnesses is best left to the RTC.⁶¹

The sole issue before Us is whether We should uphold the finding that Siddayao, Jr. is guilty of violating Section 5, Article II of R.A. 9165.

We grant the motion. When We issued Our Resolution dismissing Siddayao's petition, We deemed substantial compliance with the requirements under Section 21 of R.A. 9165 to be sufficient. However, given that the recent rulings of this Court require strict compliance with Section 21,⁶² We must re-evaluate this case.

The two (2) sachets containing the drug specimens respectively marked as Exhibits R-3 and R-4⁶³ are the *corpus delicti* of the crime of Illegal Sale of

⁵⁸ Id. at 40-46.

⁵⁹ CA *rollo*, pp. 67-68.

⁶⁰ Id. at 68-69.

⁶¹ Id. at 69-73.

⁶² See *People v. Ruiz*, G.R. No. 243635, November 27, 2019, *People v. Antonio*, G.R. No. 243936, September 16, 2019, and *People v. Mamarinta*, G.R. No. 243589, September 9, 2019.

⁶³ TSN dated February 24, 2010, pp. 23-24.

Dangerous Drugs under Section 5, Article II of R.A. 9165. In order to convict Siddayao, Jr. of the crime charged against him, it must be shown that the identity and integrity of these drug specimens have been preserved through strict compliance with Section 21 of R.A. 9165. Since the incident here took place before the effectivity of R.A. 10640, the original provision of Section 21 under R.A. 9165 shall apply:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x

It is the duty of the prosecution to show compliance with Section 21, including acknowledging and justifying any perceived deviations from the requirements of the law.⁶⁴ If there are any deviations, it must be proven that: (1) there is a justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.⁶⁵ These deviations must be explained and its justification must be proven as a fact.⁶⁶ After all, Section 21 is not a mere procedural technicality and cannot be disregarded as an impediment to the conviction of illegal drug suspects but is a matter of substantive law.⁶⁷ And when the amount of drug involved is miniscule, as in this case, the Court expects a more exacting compliance with Section 21.⁶⁸ Unfortunately, plaintiff-appellee failed to show compliance with Section 21.

⁶⁴ *People v. Lim*, G.R. No. 231989, September 4, 2018.

⁶⁵ *Limbo v. People*, G.R. No. 238299, July 1, 2019.

⁶⁶ *People v. Gamboa*, G.R. No. 233702, June 20, 2018.

⁶⁷ *People v. Miranda*, G.R. No. 229671, January 31, 2018.

⁶⁸ *People v. Holgado*, 741 Phil. 78 (2014).

First, the marking and inventory of the seized items were not done immediately at the place of arrest. Plaintiff-appellee is reminded that under the IRR of R.A. 9165, the conduct of the marking and inventory at the police station or office is permissible subject to two conditions: (1) it is practicable; and (2) the police station or office must be the nearest one to the place of arrest.⁶⁹ In this case, the marking and inventory was not even conducted in a police station or office but at the Barangay Hall of Caritan Norte. IO1 Sumalag simply said that the Barangay Hall is more or less 100 meters away from the place of the arrest.⁷⁰ We cannot assume from this information alone that the Barangay Hall is the nearest available area to the place of arrest. It also does not establish that it was more practicable to conduct the marking and inventory thereat.

Second, the required witnesses were not present in this case. Section 21 of R.A. 9165 requires the presence of three (3) witnesses, namely: (1) an elected public official; (2) a representative from the media; and (3) a representative from the Department of Justice (DOJ) during the apprehension of the accused⁷¹ as well as the marking and inventory of the seized items. None of the required witnesses were present when Siddayao, Jr. was apprehended and two (2) elected public officials and a media representative were present during the marking and inventory of the items. There was no representative from the DOJ from the time that Siddayao, Jr. was apprehended until the items seized from him were inventoried. We could have excused the absence of these witnesses if plaintiff-appellee showed that earnest efforts were made to secure the presence of the required witnesses,⁷² but it did not do so.

Third, the chain of custody of the seized drug specimens was not clearly established in this case. IO1 Sumalag initially said that he purchased one sachet from Siddayao, Jr. and recovered another sachet when he frisked him.⁷³ However, he later recanted and said that he purchased two (2) sachets from Siddayao, Jr.⁷⁴ We find it hard to believe that this inconsistency was merely due to IO1 Sumalag being nervous.⁷⁵ The two (2) statements essentially allege two (2) different crimes. Moreover, IO1 Sumalag did not correct his supposed error until he appeared again before the court a few months later. Further, IO1 Sumalag said that he turned over the specimen to IO3 Alan for documentation and it was immediately returned to him thereafter.⁷⁶ But IO3 Alan denied that the items were ever turned over to him. He claimed that the items were

⁶⁹ IRR of R.A. 9165, Section 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – x x x Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; x x x.

⁷⁰ TSN dated May 13, 2010, p. 21.

⁷¹ *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019.

⁷² *Limbo v. People*, supra note 65.

⁷³ TSN dated May 13, 2010, p. 20.

⁷⁴ TSN dated August 24, 2010, p. 3.

⁷⁵ Id. at 31-32.

⁷⁶ TSN dated September 21, 2010, p. 11.

delivered by IO1 Sumalag to the PNP Regional Crime Laboratory.⁷⁷ IO3 Alan also said that IO2 Sacolles turned over the evidence to him after the conduct of the inventory.⁷⁸ IO3 Sacolles made no mention of this in his testimony.

Aside from this, plaintiff-appellee did not discuss how SPO4 Laguitao handled the specimens after PCI Quintero turned it over to him. Notably, it was stated during the offer of PCI Quintero's testimony that he "sealed the specimen and submitted the same to the prosecution as evidence."⁷⁹ Thus, PCI Quintero did not bring the specimens himself to the court. These were merely presented to him when he gave his testimony.⁸⁰ SPO4 Laguitao did not testify⁸¹ or bring the specimens to the court as well. It is unclear who brought the specimens to the court.

The Court cannot ignore these deviations from the requirements under Section 21 of R.A. 9165 as well as the glaring gaps in the chain of custody of the seized drug specimens. Plaintiff-appellee failed to establish that the integrity and identity of the drug specimens were preserved. Thus, We cannot consider it as proof of Siddayao, Jr.'s guilt. There being no basis to sustain Siddayao, Jr.'s conviction, he should be acquitted.

WHEREFORE, the motion is **GRANTED**. The Resolution dated July 22, 2019 of this Court affirming the Decision dated May 24, 2016 of the Court of Appeals in CA-G.R. CR HC No. 0-6840 is **REVERSED** and **SET ASIDE**. Accused-appellant Francisco Siddayao, Jr. is **ACQUITTED** of the crime charged against him and is **ORDERED** to be **IMMEDIATELY RELEASED**, unless he is being lawfully held in custody for any other reason. The Director of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED."

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

GER
12/120

Special & Appealed Cases Service
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COURT OF APPEALS
CA G.R. CR HC No. 0-6840
1000 Manila

⁷⁷ TSN dated August 3, 2011, p. 11.
⁷⁸ Id.
⁷⁹ TSN dated February 24, 2010, p. 4.
⁸⁰ Id. at 20.
⁸¹ CA rollo, p. 42.

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The Presiding Judge
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Branch 5, 3500 Tuguegarao City
(Crim. Case No. 13222)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
New Bilibid Prison
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Mr. Francisco Siddayao, Jr.
Accused-Appellant
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