Republic of the Philippines
Supreme Court
Manila

EN BANC

SALVADOR ESTIPONA, JR. *y* ASUELA,
Petitioner,

- *versus* -

HON. FRANK E. LOBRIGO, Presiding Judge of the Regional Trial Court, Branch 3, Legazpi City, Albay, and PEOPLE OF THE PHILIPPINES,
Respondents.

G.R. No. 226679

Present:

SERENO, *C. J.,*
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,*
MARTIRES,
TIJAM,
REYES, JR., and
GESMUNDO, *JJ.*

Promulgated:

August 15, 2017

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DECISION

PERALTA, *J.*:

Challenged in this petition for *certiorari* and prohibition[1] is the constitutionality of Section 23 of Republic Act *(R.A.)* No. 9165, or the *"Comprehensive Dangerous Drugs Act of 2002,"*[2] which provides:

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* On wellness leave.

1 With Urgent Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

2 Approved on June 7, 2002.

> SEC 23. *Plea-Bargaining Provision.* – Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.[3]

The facts are not in dispute.

Petitioner Salvador A. Estipona, Jr. *(Estipona)* is the accused in Criminal Case No. 13586 for violation of Section 11, Article II of R.A. No. 9165 (*Possession of Dangerous Drugs*). The Information alleged:

> That on or about the 21st day of March, 2016, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any regulated drug and without the corresponding license or prescription, did then and there, willfully, unlawfully and feloniously have, in his possession and under his control and custody, one (1) piece heat-sealed transparent plastic sachet marked as VOP 03/21/16-1G containing 0.084 [gram] of white crystalline substance, which when examined were found to be positive for Methamphetamine Hydrocloride *(Shabu)*, a dangerous drug.
>
> CONTRARY TO LAW.[4]

On June 15, 2016, Estipona filed a *Motion to Allow the Accused to Enter into a Plea Bargaining Agreement*,[5] praying to withdraw his not guilty plea and, instead, to enter a plea of guilty for violation of Section 12, Article II of R.A. No. 9165 (*Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*) with a penalty of rehabilitation in view of his being a first-time offender and the minimal quantity of the dangerous drug seized in his possession. He argued that Section 23 of R.A. No. 9165 violates: (1) the intent of the law expressed in paragraph 3, Section 2 thereof; (2) the rule-making authority of the Supreme Court under Section 5(5), Article VIII of the 1987 Constitution; and (3) the principle of separation of powers among the three equal branches of the government.

In its Comment or Opposition[6] dated June 27, 2016, the prosecution moved for the denial of the motion for being contrary to Section 23 of R.A. No. 9165, which is said to be justified by the Congress' prerogative to choose which offense it would allow plea bargaining. Later, in a Comment

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[3] This repealed Section 20-A of R.A. No. 6425 *("Dangerous Drugs Act of 1972")*, as amended by R.A. No. 7659 *("Death Penalty Law")*, which was approved on December 13, 1993. It provided:

> SEC. 20-A. *Plea-bargaining Provisions.* – Any person charged under any provision of this Act where the imposable penalty is *reclusion perpetua* to death shall not be allowed to avail of the provision on plea-bargaining.

[4] *Rollo*, p. 47.

[5] *Id.* at 49-51.

[6] *Id.* at 52.

or Opposition[7] dated June 29, 2016, it manifested that it "is open to the Motion of the accused to enter into plea bargaining to give life to the intent of the law as provided in paragraph 3, Section 2 of [R.A. No.] 9165, however, with the express mandate of Section 23 of [R.A. No.] 9165 prohibiting plea bargaining, [it] is left without any choice but to reject the proposal of the accused."

On July 12, 2016, respondent Judge Frank E. Lobrigo of the Regional Trial Court *(RTC)*, Branch 3, Legazpi City, Albay, issued an Order denying Estipona's motion. It was opined:

> The accused posited in his motion that Sec. 23 of RA No. 9165, which prohibits plea bargaining, encroaches on the exclusive constitutional power of the Supreme Court to promulgate rules of procedure because plea bargaining is a "rule of procedure." Indeed, plea bargaining forms part of the Rules on Criminal Procedure, particularly under Rule 118, the rule on pre-trial conference. It is only the Rules of Court promulgated by the Supreme Court pursuant to its constitutional rule-making power that breathes life to plea bargaining. It cannot be found in any statute.
>
> Without saying so, the accused implies that Sec. 23 of Republic Act No. 9165 is unconstitutional because it, in effect, suspends the operation of Rule 118 of the Rules of Court insofar as it allows plea bargaining as part of the mandatory pre-trial conference in criminal cases.
>
> The Court sees merit in the argument of the accused that it is also the intendment of the law, R.A. No. 9165, to rehabilitate an accused of a drug offense. Rehabilitation is thus only possible in cases of use of illegal drugs because plea bargaining is disallowed. However, by case law, the Supreme Court allowed rehabilitation for accused charged with possession of paraphernalia with traces of dangerous drugs, as held in People v. Martinez, G.R. No. 191366, 13 December 2010. The ruling of the Supreme Court in this case manifested the relaxation of an otherwise stringent application of Republic Act No. 9165 in order to serve an intent for the enactment of the law, that is, to rehabilitate the offender.
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> Within the spirit of the disquisition in People v. Martinez, there might be plausible basis for the declaration of Sec. 23 of R.A. No. 9165, which bars plea bargaining as unconstitutional because indeed the inclusion of the provision in the law encroaches on the exclusive constitutional power of the Supreme Court.
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> While basic is the precept that lower courts are not precluded from resolving, whenever warranted, constitutional questions, the Court is not unaware of the admonition of the Supreme Court that lower courts must observe a becoming modesty in examining constitutional questions. Upon which admonition, it is thus not for this lower court to declare Sec. 23 of R.A. No. 9165 unconstitutional given the potential ramifications that such

[7] *Id.* at 53.

> declaration might have on the prosecution of illegal drug cases pending before this judicial station.[8]

Estipona filed a motion for reconsideration, but it was denied in an Order[9] dated July 26, 2016; hence, this petition raising the issues as follows:

> I.
> WHETHER SECTION 23 OF REPUBLIC ACT NO. 9165, WHICH PROHIBITS PLEA BARGAINING IN ALL VIOLATIONS OF THE SAID LAW, IS UNCONSTITUTIONAL FOR BEING VIOLATIVE OF THE CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAW.
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> II.
> WHETHER SECTION 23 OF REPUBLIC ACT NO. 9165 IS UNCONSTITUTIONAL AS IT ENCROACHED UPON THE POWER OF THE SUPREME COURT TO PROMULGATE RULES OF PROCEDURE.
>
> III.
> WHETHER THE REGIONAL TRIAL COURT, AS PRESIDED BY HON. FRANK E. LOBRIGO, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO DECLARE SECTION 23 OF REPUBLIC ACT NO. 9165 AS UNCONSTITUTIONAL.[10]

We grant the petition.

PROCEDURAL MATTERS

The People of the Philippines, through the Office of the Solicitor General *(OSG)*, contends that the petition should be dismissed outright for being procedurally defective on the grounds that: (1) the Congress should have been impleaded as an indispensable party; (2) the constitutionality of Section 23 of R.A. No. 9165 cannot be attacked collaterally; and (3) the proper recourse should have been a petition for declaratory relief before this Court or a petition for *certiorari* before the RTC. Moreover, the OSG argues that the petition fails to satisfy the requisites of judicial review because: (1) Estipona lacks legal standing to sue for failure to show direct injury; (2) there is no actual case or controversy; and (3) the constitutionality of Section 23 of R.A. No. 9165 is not the *lis mota* of the case.

On matters of technicality, some points raised by the OSG maybe correct. Nonetheless, without much further ado, it must be underscored that

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8 *Id.* at 44-45.
9 *Id.* at 46, 54-55.
10 *Id.* at 3, 15-16.

it is within this Court's power to make exceptions to the rules of court. Under proper conditions, We may permit the full and exhaustive ventilation of the parties' arguments and positions despite the supposed technical infirmities of a petition or its alleged procedural flaws. In discharging its solemn duty as the final arbiter of constitutional issues, the Court shall not shirk from its obligation to determine novel issues, or issues of first impression, with far-reaching implications.[11]

Likewise, matters of procedure and technicalities normally take a backseat when issues of substantial and transcendental importance are present.[12] We have acknowledged that the Philippines' problem on illegal drugs has reached "epidemic," "monstrous," and "harrowing" proportions,[13] and that its disastrously harmful social, economic, and spiritual effects have broken the lives, shattered the hopes, and destroyed the future of thousands especially our young citizens.[14] At the same time, We have equally noted that "as urgent as the campaign against the drug problem must be, so must we as urgently, if not more so, be vigilant in the protection of the rights of the accused as mandated by the Constitution x x x who, because of excessive zeal on the part of the law enforcers, may be unjustly accused and convicted."[15] Fully aware of the gravity of the drug menace that has beset our country and its direct link to certain crimes, the Court, within its sphere, must do its part to assist in the all-out effort to lessen, if not totally eradicate, the continued presence of drug lords, pushers and users.[16]

Bearing in mind the very important and pivotal issues raised in this petition, technical matters should not deter Us from having to make the final and definitive pronouncement that everyone else depends for enlightenment and guidance.[17] When public interest requires, the Court may brush aside procedural rules in order to resolve a constitutional issue.[18]

> x x x [T]he Court is invested with the power to suspend the application of the rules of procedure as a necessary complement of its power to promulgate the same. *Barnes v. Hon. Quijano Padilla* discussed the rationale for this tenet, *viz.*:

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[11] See *Garcia v. Judge Drilon, et al.*, 712 Phil. 44, 84 (2013).

[12] *GMA Network, Inc. v. COMELEC*, 742 Phil. 174, 209-210 (2014).

[13] See *People v. Castro*, 340 Phil. 245, 246 (1997); *People v. Camba*, 302 Phil. 311, 323 (1994); *People v. Tantiado*, 288 Phil. 241, 258 (1992); *People v. Zapanta*, 272-A Phil. 161, 166 (1991); *People v. Taruc*, 241 Phil. 177, 186 (1988); and *People v. Ale*, 229 Phil. 81, 87 (1986).

[14] *People v. Tantiado, supra*, as cited in *People v. Camba, supra*, and *People v. Caco*, 294 Phil. 54, 65 (1993).

[15] *People v. Quintana*, 256 Phil. 430, 436 (1989).

[16] See *People v. Gatlabayan*, 669 Phil. 240, 261 (2011); *People v. Lagmay*, 365 Phil. 606, 632 (1999); and *People v. Arcega*, G.R. No. 96319, March 31, 1992, 207 SCRA 681, 688.

[17] See *GMA Network, Inc. v. COMELEC, supra* note 12, at 210.

[18] *Matibag v. Benipayo*, 429 Phil. 554, 579 (2002).

> Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, x x x.
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> *The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.*[19]

SUBSTANTIVE ISSUES

Rule-making power of the Supreme Court under the 1987 Constitution

Section 5(5), Article VIII of the 1987 Constitution explicitly provides:

> Sec. 5. The Supreme Court shall have the following powers:
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> x x x x
>
> (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.

The power to promulgate rules of pleading, practice and procedure is now Our exclusive domain and no longer shared with the Executive and Legislative departments.[20] In *Echegaray v. Secretary of Justice,*[21] then Associate Justice (later Chief Justice) Reynato S. Puno traced the history of

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[19] *Philippine Woman's Christian Temperance Union, Inc. v. Teodoro R. Yangco 2nd And 3rd Generation Heirs Foundation, Inc.*, 731 Phil. 269, 292 (2014). (Citation omitted and italics supplied)

[20] *Echegaray v. Secretary of Justice,* 361 Phil. 73, 88 (1999), as cited in *RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fee,* 626 Phil. 93, 106 (2010) and *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Hon. Judge Cabato-Cortes,* 627 Phil. 543, 549 (2010).

[21] *Supra.*

the Court's rule-making power and highlighted its evolution and development.

> x x x *It should be stressed that the power to promulgate rules of pleading, practice and procedure was granted by our Constitutions to this Court to enhance its independence*, for in the words of Justice Isagani Cruz "without independence and integrity, courts will lose that popular trust so essential to the maintenance of their vigor as champions of justice." Hence, our Constitutions continuously vested this power to this Court for it enhances its independence. Under the *1935 Constitution*, the power of this Court to promulgate rules concerning pleading, practice and procedure was granted *but it appeared to be co-existent with legislative power for it was subject to the power of Congress to repeal, alter or supplement.* Thus, its Section 13, Article VIII provides:
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> > "Sec. 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice and procedure are hereby repealed as statutes, and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. *The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines."*
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> The said power of Congress, however, is not as absolute as it may appear on its surface. In *In re: Cunanan* Congress in the exercise of its power to amend rules of the Supreme Court regarding admission to the practice of law, enacted the Bar Flunkers Act of 1953 which considered as a passing grade, the average of 70% in the bar examinations after July 4, 1946 up to August 1951 and 71% in the 1952 bar examinations. *This Court struck down the law as unconstitutional.* In his *ponencia*, Mr. Justice Diokno held that "x x x the disputed law is not a legislation; it is a judgment – a judgment promulgated by this Court during the aforecited years affecting the bar candidates concerned; and although this Court certainly can revoke these judgments even now, for justifiable reasons, it is no less certain that *only this Court*, and not the legislative nor executive department, that may do so. Any attempt on the part of these departments would be a clear usurpation of its function, as is the case with the law in question." The venerable jurist further ruled: "It is obvious, therefore, that the ultimate power to grant license for the practice of law belongs *exclusively* to this Court, and the law passed by Congress on the matter is of permissive character, or as other authorities say, merely to fix the minimum conditions for the license." *By its ruling, this Court qualified the absolutist tone of the power of Congress* to "repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines.

The ruling of this Court in *In re Cunanan* was not changed by the *1973 Constitution*. For the *1973 Constitution reiterated* the power of this Court "to promulgate rules concerning pleading, practice and procedure in all courts, x x x which, however, may be repealed, altered or supplemented by the Batasang Pambansa x x x." More completely, Section 5(2)5 of its Article X provided:

> x x x x
>
> "Sec. 5. The Supreme Court shall have the following powers.
>
> x x x x
>
> (5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the Batasang Pambansa. 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."

Well worth noting is that the *1973 Constitution further strengthened* the independence of the judiciary by giving to it the additional power to promulgate rules governing the integration of the Bar.

The *1987 Constitution* molded an even *stronger and more independent judiciary*. Among others, *it enhanced the rule making power of this Court*. Its Section 5(5), Article VIII provides:

> x x x
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> "Section 5. The Supreme Court shall have the following powers:
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> x x x
>
> (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.*"

The rule making power of this Court was expanded. This Court for the *first time* was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the *first time* the power to disapprove rules of procedure of special courts and quasi-judicial bodies. *But most importantly, the 1987*

> *Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure.* In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive. x x x.[22]

Just recently, *Carpio-Morales v. Court of Appeals (Sixth Division)*[23] further elucidated:

> While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress, **the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court**. Section 5 (5), Article VIII of the 1987 Constitution reads:
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> x x x x
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> In *Echegaray v. Secretary of Justice (Echegaray)*, the Court traced the evolution of its rule-making authority, which, under the 1935 and 1973 Constitutions, had been priorly subjected to a power-sharing scheme with Congress. As it now stands, the 1987 Constitution **textually altered the old provisions by deleting the concurrent power of Congress to amend the rules, thus solidifying in one body the Court's rule-making powers,** in line with the Framers' vision of institutionalizing a "**[s]tronger and more independent judiciary.**"
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> The records of the deliberations of the Constitutional Commission would show that the Framers debated on whether or not the Court's rule-making powers should be shared with Congress. There was an initial suggestion to insert the sentence "The National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court," right after the phrase "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[,]" in the enumeration of powers of the Supreme Court. Later, Commissioner Felicitas S. Aquino proposed to delete the former sentence and, instead, after the word "[under]privileged," place a comma (,) to be followed by "the phrase with the concurrence of the National Assembly." Eventually, a compromise formulation was reached wherein (a) the Committee members agreed to Commissioner Aquino's proposal **to delete** the phrase "the National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court" and (b) in turn, Commissioner Aquino agreed **to withdraw** his proposal to add "the phrase with the concurrence of the National Assembly." **The changes were approved, thereby leading to the present lack of textual reference to any form of Congressional participation in Section 5 (5), Article VIII,** *supra.* **The**

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[22] *Echegaray v. Secretary of Justice, supra* note 20, at 85-88. (Citations omitted). See also *RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fee, supra* note 20, at 106-108 and *In Re: Exemption of the National Power Corporation from Payment of Filing/Docket Fees,* 629 Phil. 1, 4-5 (2010).

[23] G.R. Nos. 217126-27, November 10, 2015, 774 SCRA 431.

> **prevailing consideration was that "<u>both bodies, the Supreme Court and the Legislature, have their inherent powers</u>."**
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> Thus, as it now stands, Congress has no authority to repeal, alter, or supplement rules concerning pleading, practice, and procedure. x x x.[24]

The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court.[25] The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by the Court.[26] Viewed from this perspective, We have rejected previous attempts on the part of the Congress, in the exercise of its legislative power, to amend the Rules of Court *(Rules)*, to wit:

> 1. *Fabian v. Desierto*[27] – Appeal from the decision of the Office of the Ombudsman in an administrative disciplinary case should be taken to the Court of Appeals under the provisions of Rule 43 of the *Rules* instead of appeal by *certiorari* under Rule 45 as provided in Section 27 of R.A. No. 6770.
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> 2. *Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc.*[28] – The Cooperative Code provisions on notices cannot replace the rules on summons under Rule 14 of the *Rules*.
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> 3. *RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees;*[29] *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Hon. Judge Cabato-Cortes;*[30] *In Re: Exemption of the National Power Corporation from Payment of Filing/Docket Fees;*[31] and *Rep. of the Phils. v. Hon. Mangotara, et al.*[32] – Despite statutory provisions, the GSIS, BAMARVEMPCO, and NPC are not exempt from the payment of legal fees imposed by Rule 141 of the *Rules*.

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[24] *Carpio-Morales v. Court of Appeals (Sixth Division), supra,* at 505-508. (Citations omitted).

[25] *RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fee, supra* note 20, at 108.

[26] *Id.*

[27] 356 Phil. 787 (1998).

[28] 738 Phil. 37 (2014).

[29] *Supra* note 20.

[30] *Supra* note 20.

[31] *Supra* note 22.

[32] 638 Phil. 353 (2010).

> 4. *Carpio-Morales v. Court of Appeals (Sixth Division)*[33] – The first paragraph of Section 14 of R.A. No. 6770, which prohibits courts except the Supreme Court from issuing temporary restraining order and/or writ of preliminary injunction to enjoin an investigation conducted by the Ombudsman, is unconstitutional as it contravenes Rule 58 of the *Rules*.

Considering that the aforesaid laws effectively modified the *Rules*, this Court asserted its discretion to amend, repeal or even establish new rules of procedure, to the exclusion of the legislative and executive branches of government. To reiterate, the Court's authority to promulgate rules on pleading, practice, and procedure is exclusive and one of the safeguards of Our institutional independence.[34]

Plea bargaining in criminal cases

Plea bargaining, as a rule and a practice, has been existing in our jurisdiction since July 1, 1940, when the 1940 *Rules* took effect. Section 4, Rule 114 (Pleas) of which stated:

> SEC. 4. *Plea of guilty of lesser offense.* – The defendant, with the consent of the court and of the fiscal, may plead guilty of any lesser offense than that charged which is necessarily included in the offense charged in the complaint or information.

When the 1964 *Rules* became effective on January 1, 1964, the same provision was retained under Rule 118 (Pleas). Subsequently, with the effectivity of the 1985 *Rules* on January 1, 1985, the provision on plea of guilty to a lesser offense was amended. Section 2, Rule 116 provided:

> SEC. 2. *Plea of guilty to a lesser offense.* – The accused with the consent of the offended party and the fiscal, may be allowed by the trial court to plead guilty to a lesser offense, regardless of whether or not it is necessarily included in the crime charged, or is cognizable by a court of lesser jurisdiction than the trial court. No amendment of the complaint or information is necessary. (4a, R-118)

As well, the term "plea bargaining" was first mentioned and expressly required during pre-trial. Section 2, Rule 118 mandated:

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[33] *Supra* note 23.

[34] See *Carpio-Morales v. Court of Appeals (Sixth Division), supra* note 23, at 517-518, citing *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Hon. Judge Cabato-Cortes, supra* note 20, at 550.

SEC. 2. *Pre-trial conference; subjects.* – The pre-trial conference shall 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; and
(e) Such other matters as will promote a fair and expeditious trial. (n)

The 1985 *Rules* was later amended. While the wordings of Section 2, Rule 118 was retained, Section 2, Rule 116 was modified in 1987. A second paragraph was added, stating that "[a] conviction under this plea shall be equivalent to a conviction of the offense charged for purposes of double jeopardy."

When R.A. No. 8493 *("Speedy Trial Act of 1998")* was enacted,[35] Section 2, Rule 118 of the *Rules* was substantially adopted. Section 2 of the law required that plea bargaining and other matters[36] that will promote a fair and expeditious trial are to be considered during pre-trial conference in all criminal cases cognizable by the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, Regional Trial Court, and the Sandiganbayan.

Currently, the pertinent rules on plea bargaining under the 2000 *Rules*[37] are quoted below:

RULE 116 (Arraignment and Plea):

SEC. 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. (Sec. 4, Cir. 38-98)

RULE 118 (Pre-trial):

SEC. 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

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35 Approved on February 12, 1998.
36 Such as stipulation of facts, marking for identification of evidence of parties, and waiver of objections to admissibility of evidence.
37 Effective December 1, 2001 (*People v. Mamarion,* 459 Phil. 51, 74 [2003]).

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;
> (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. (Sec. 2 & 3, Cir. 38-98)

Plea bargaining is a rule of procedure

The Supreme Court's sole prerogative to issue, amend, or repeal procedural rules is limited to the preservation of substantive rights, *i.e.*, the former should not diminish, increase or modify the latter.[38] "Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions."[39] *Fabian v. Hon. Desierto*[40] laid down the test for determining whether a rule is substantive or procedural in nature.

> It will be noted that no definitive line can be drawn between those rules or statutes which are procedural, hence within the scope of this Court's rule-making power, and those which are substantive. In fact, a particular rule may be procedural in one context and substantive in another. It is admitted that what is procedural and what is substantive is frequently a question of great difficulty. It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system.
>
> In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the *judicial process for enforcing rights and duties recognized by substantive law* and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but *if it operates as a means of implementing an existing right then the rule deals merely with procedure.*[41]

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[38] CONSTITUTION, Art. VIII, Sec. 5(5). See also *Ogayon v. People,* 768 Phil. 272, 288 (2015) and *San Ildefonso Lines, Inc. v. CA,* 352 Phil. 405, 415-416 (1998).

[39] See *Carpio-Morales v. Court of Appeals (Sixth Division), supra* note 23, at 516-517.

[40] *Supra* note 27.

[41] *Fabian v. Desierto, supra* at 808-809. See also *Carpio-Morales v. Court of Appeals (Sixth Division), supra* note 23, at 517; *Securities and Exchange Commission v. Judge Laigo, et al.,* 768 Phil. 239,

In several occasions, We dismissed the argument that a procedural rule violates substantive rights. For example, in *People v. Lacson,*[42] Section 8, Rule 117 of the *Rules* on provisional dismissal was held as a special procedural limitation qualifying the right of the State to prosecute, making the time-bar an essence of the given right or as an inherent part thereof, so that its expiration operates to extinguish the right of the State to prosecute the accused.[43] Speaking through then Associate Justice Romeo J. Callejo, Sr., the Court opined:

> In the new rule in question, as now construed by the Court, it has fixed a time-bar of one year or two years for the revival of criminal cases provisionally dismissed with the express consent of the accused and with *a priori* notice to the offended party. The time-bar may appear, on first impression, unreasonable compared to the periods under Article 90 of the Revised Penal Code. However, in fixing the time-bar, the Court balanced the societal interests and those of the accused for the orderly and speedy disposition of criminal cases with minimum prejudice to the State and the accused. It took into account the substantial rights of both the State and of the accused to due process. The Court believed that the time limit is a reasonable period for the State to revive provisionally dismissed cases with the consent of the accused and notice to the offended parties. The time-bar fixed by the Court must be respected unless it is shown that the period is manifestly short or insufficient that the rule becomes a denial of justice. The petitioners failed to show a manifest shortness or insufficiency of the time-bar.
>
> The new rule was conceptualized by the Committee on the Revision of the Rules and approved by the Court *en banc* primarily to enhance the administration of the criminal justice system and the rights to due process of the State and the accused by eliminating the deleterious practice of trial courts of provisionally dismissing criminal cases on motion of either the prosecution or the accused or jointly, either with no time-bar for the revival thereof or with a specific or definite period for such revival by the public prosecutor. There were times when such criminal cases were no longer revived or refiled due to causes beyond the control of the public prosecutor or because of the indolence, apathy or the lackadaisical attitude of public prosecutors to the prejudice of the State and the accused despite the mandate to public prosecutors and trial judges to expedite criminal proceedings.
>
> It is almost a universal experience that the accused welcomes delay as it usually operates in his favor, especially if he greatly fears the consequences of his trial and conviction. He is hesitant to disturb the hushed inaction by which dominant cases have been known to expire.
>
> The inordinate delay in the revival or refiling of criminal cases may impair or reduce the capacity of the State to prove its case with the disappearance or nonavailability of its witnesses. Physical evidence may

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269-270 (2015); *Jaylo, et al. v. Sandiganbayan, et al.,* 751 Phil. 123, 141-142 (2015); *Land Bank of the Phils. v. De Leon,* 447 Phil. 495, 503 (2003); and *Bernabe v. Alejo,* 424 Phil. 933, 941 (2002).

[42] 448 Phil. 317 (2003).

[43] See *Los Baños v. Pedro,* 604 Phil. 215, 229 (2009).

> have been lost. Memories of witnesses may have grown dim or have faded. Passage of time makes proof of any fact more difficult. The accused may become a fugitive from justice or commit another crime. The longer the lapse of time from the dismissal of the case to the revival thereof, the more difficult it is to prove the crime.
>
> On the other side of the fulcrum, a mere provisional dismissal of a criminal case does not terminate a criminal case. The possibility that the case may be revived at any time may disrupt or reduce, if not derail, the chances of the accused for employment, curtail his association, subject him to public obloquy and create anxiety in him and his family. He is unable to lead a normal life because of community suspicion and his own anxiety. He continues to suffer those penalties and disabilities incompatible with the presumption of innocence. He may also lose his witnesses or their memories may fade with the passage of time. In the long run, it may diminish his capacity to defend himself and thus eschew the fairness of the entire criminal justice system.
>
> The time-bar under the new rule was fixed by the Court to excise the malaise that plagued the administration of the criminal justice system for the *benefit of the State and the accused*; not for the accused only.[44]

Also, We said in *Jaylo, et al. v. Sandiganbayan, et al.*[45] that Section 6, Rule 120 of the *Rules*, which provides that an accused who failed to appear at the promulgation of the judgment of conviction shall lose the remedies available against the judgment, does not take away substantive rights but merely provides the manner through which an existing right may be implemented.

> Section 6, Rule 120, of the Rules of Court, does not take away *per se* the right of the convicted accused to avail of the remedies under the Rules. It is the failure of the accused to appear without justifiable cause on the scheduled date of promulgation of the judgment of conviction that forfeits their right to avail themselves of the remedies against the judgment.
>
> It is not correct to say that Section 6, Rule 120, of the Rules of Court diminishes or modifies the substantive rights of petitioners. It only works in pursuance of the power of the Supreme Court to "provide a simplified and inexpensive procedure for the speedy disposition of cases." This provision protects the courts from delay in the speedy disposition of criminal cases – delay arising from the simple expediency of nonappearance of the accused on the scheduled promulgation of the judgment of conviction.[46]

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[44] *People v. Lacson, supra* note 42, at 387-389. (Citations omitted).

[45] *Supra* note 41.

[46] *Jaylo, et al. v. Sandiganbayan, et al., id.* at 142-143. (Citation omitted).

By the same token, it is towards the provision of a simplified and inexpensive procedure for the speedy disposition of cases in all courts[47] that the rules on plea bargaining was introduced. As a way of disposing criminal charges by agreement of the parties, plea bargaining is considered to be an "important," "essential," "highly desirable," and "legitimate" component of the administration of justice.[48] Some of its salutary effects include:

> x x x 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. (*Brady v. United States,* 397 U.S. 742, 752 [1970])
>
> Disposition of charges after plea discussions x x x leads to prompt and largely final disposition of most criminal cases; it avoids much of the corrosive impact of enforced idleness during pretrial confinement for those who are denied release pending trial; it protects the public from those accused persons who are prone to continue criminal conduct even while on pretrial release; and, by shortening the time between charge and disposition, it enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned. (*Santobello v. New York,* 404 U.S. 257, 261 [1971])
>
> The defendant avoids extended pretrial incarceration and the anxieties and uncertainties of a trial; he gains a speedy disposition of his case, the chance to acknowledge his guilt, and a prompt start in realizing whatever potential there may be for rehabilitation. Judges and prosecutors conserve vital and scarce resources. The public is protected from the risks posed by those charged with criminal offenses who are at large on bail while awaiting completion of criminal proceedings. (*Blackledge v. Allison,* 431 U.S. 63, 71 [1977])

In this jurisdiction, plea bargaining has been defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval."[49] There is give-and-take negotiation common in plea bargaining.[50] The essence of the agreement is

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[47] CONSTITUTION, Art. VIII, Sec. 5(5). See also *Neypes v. Court of Appeals,* 506 Phil. 613, 626 (2005) and *San Ildefonso Lines, Inc. v. CA, supra* note 38, at 415-416.

[48] See *Corbitt v. New Jersey,* 439 U.S. 212 (1978); *Blackledge v. Allison,* 431 U.S. 63 (1977); and the Majority Opinion and Mr. Justice Douglas' Concurring Opinion in *Santobello v. New York,* 404 U.S. 257 (1971).

[49] *People v. Villarama, Jr.,* 285 Phil. 723, 730 (1992), citing Black's Law Dictionary, 5th Ed., 1979, p. 1037. See also *Gonzales III v. Office of the President of the Philippines, et al,* 694 Phil. 52, 106 (2012); *Atty. Amante-Descallar v. Judge Ramas,* 601 Phil. 21, 40 (2009); *Daan v. Hon. Sandiganbayan,* 573 Phil. 368, 375 (2008); and *People v. Mamarion, supra* note 37, at 75.

[50] *Parker v. North Carolina,* 397 U.S. 790 (1970).

that both the prosecution and the defense make concessions to avoid potential losses.[51] Properly administered, plea bargaining is to be encouraged because the chief virtues of the system – speed, economy, and finality – can benefit the accused, the offended party, the prosecution, and the court.[52]

Considering the presence of mutuality of advantage,[53] the rules on plea bargaining neither create a right nor take away a vested right. Instead, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.

The decision to plead guilty is often heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted.[54] In any case, whether it be to the offense charged or to a lesser crime, a guilty plea is a "serious and sobering occasion" inasmuch as it constitutes a waiver of the fundamental rights to be presumed innocent until the contrary is proved, to be heard by himself and counsel, to meet the witnesses face to face, to bail (except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong), to be convicted by proof beyond reasonable doubt, and not to be compelled to be a witness against himself.[55]

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.[56] 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[57] and the prosecutor, which

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[51] *Hughey v. United States,* 495 U.S. 411 (1990).

[52] See *Santobello v. New York, supra* note 48 and *Blackledge v. Allison, supra* note 48.

[53] *Brady v. United States,* 397 U.S. 742 (1970).

[54] *Id.*

[55] See *Brady v. United States, supra*, and Mr. Justice Douglas' Concurring Opinion in *Santobello v. New York, supra* note 48, at 264.

[56] *Weatherford v. Bursey,* 429 U.S. 545 (1977). See also Mr. Justice Scalia's Dissenting Opinion in *Lafler v. Cooper,* 566 U.S. 156 (2011).

[57] The State is the offended party in crimes under R.A. No. 9165. In *People v. Villarama, Jr., supra* note 49, at 732 the Court ruled:

"x x x While the acts constituting the crimes are not wrong in themselves, they are made so by law because they infringe upon the rights of others. The threat posed by drugs against human dignity and the integrity of society is malevolent and incessant (*People v. Ale*, G.R. No. 70998, October 14, 1986, 145 SCRA 50, 58). Such pernicious effect is felt not only by the addicts themselves but also by their families. As a result, society's survival is endangered because its basic unit, the family, is the ultimate victim of the drug menace. The state is, therefore, the offended party in this case. As guardian of the rights of the people, the government files the criminal action in the name of the People of the Philippines. The Fiscal who represents the government is duty bound to defend the public interests, threatened by crime, to the point that it is as though he were the person directly injured by the offense (see *United States v. Samio*, 3 Phil. 691, 696). Viewed in this light, the consent of the offended party, i.e. the state, will have to be secured from the Fiscal who acts in behalf of the government."

is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged.[58] 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.[59]

> [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 competent to undertake," we have been "properly hesitant to examine the decision whether to prosecute."[60]

The plea is further addressed to the sound discretion of the trial court, which *may* allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged. The word *may* denotes an exercise of discretion upon the trial court on whether to allow the accused to make such plea.[61] Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.[62]

Plea bargaining is allowed during the arraignment, the pre-trial, or even up to the point when the prosecution already rested its case.[63] As regards plea bargaining during the pre-trial stage, the trial court's exercise of discretion should not amount to a grave abuse thereof.[64] "Grave abuse of discretion" is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility; it arises when

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58 *People v. Villarama, Jr., supra* note 49.

59 *Id.*

60 *Newton v. Rumery,* 480 U.S. 386, 396 (1987).

61 *Daan v. Hon. Sandiganbayan, supra* note 49, at 732. In *Capati v. Dr. Ocampo* (199 Phil. 230, 234 [1982], *citing In Re: Hirsh's Estate* 5A. 2d 160, 163; 334 Pa. 172; Words & Phrases, permanent edition, 26a.), the Court also held:

> "It is well settled that the word 'may' is merely permissive and operates to confer discretion upon a party. Under ordinary circumstances, the term 'may be' connotes possibility; it does not connote certainty. 'May' is an auxillary verb indicating liberty, opportunity, permission or possibility."

62 *Daan v. Hon. Sandiganbayan, supra* note 49, at 377 and *People v. Villarama, Jr., supra* note 49, at 730.

63 See *Daan v. Hon. Sandiganbayan, id.* at 376; *People v. Mamarion, supra* note 37, at 75; *Ladino v. Hon. Garcia,* 333 Phil. 254, 258 (1996); and *People v. Villarama, Jr., supra* note 49, at 731.

64 See *Daan v. Hon. Sandiganbayan, supra* note 49, at 378.

a court or tribunal violates the Constitution, the law or existing jurisprudence.[65]

If the accused moved to plead guilty to a lesser offense subsequent to a bail hearing or after the prosecution rested its case, the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged.[66] The only basis on which the prosecutor and the court could rightfully act in allowing change in the former plea of not guilty could be nothing more and nothing less than the evidence on record. As soon as the prosecutor has submitted a comment whether for or against said motion, it behooves the trial court to assiduously study the prosecution's evidence as well as all the circumstances upon which the accused made his change of plea to the end that the interests of justice and of the public will be served.[67] The ruling on the motion must disclose the strength or weakness of the prosecution's evidence.[68] Absent any finding on the weight of the evidence on hand, the judge's acceptance of the defendant's change of plea is improper and irregular.[69]

On whether Section 23 of R.A. No. 9165 violates the equal protection clause

At this point, We shall not resolve the issue of whether Section 23 of R.A. No. 9165 is contrary to the constitutional right to equal protection of the law in order not to preempt any future discussion by the Court on the policy considerations behind Section 23 of R.A. No. 9165. Pending deliberation on whether or not to adopt the statutory provision *in toto* or a qualified version thereof, We deem it proper to declare as invalid the prohibition against plea bargaining on drug cases until and unless it is made part of the rules of procedure through an administrative circular duly issued for the purpose.

WHEREFORE, the petition for *certiorari* and prohibition is **GRANTED**. Section 23 of Republic Act No. 9165 is declared unconstitutional for being contrary to the rule-making authority of the Supreme Court under Section 5(5), Article VIII of the 1987 Constitution.

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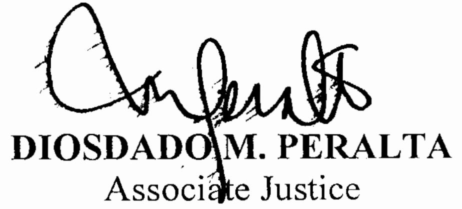
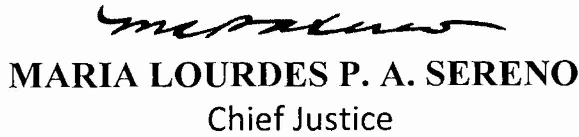
[65] *Sofronio Albania v. Commission on Elections, et al.,* G.R. No. 226792, June 6, 2017.
[66] *People v. Villarama, Jr., supra* note 49, at 252, as cited in *Gonzales III v. Office of the President of the Philippines, et al., supra* note 49, at 106 and *People v. Mamarion, supra* note 37, at 76.
[67] *People v. Villarama, Jr., supra* note 49, at 731.
[68] See *People v. Villarama, supra.*
[69] *People v. Villarama, Jr., supra* note 49.

SO ORDERED.

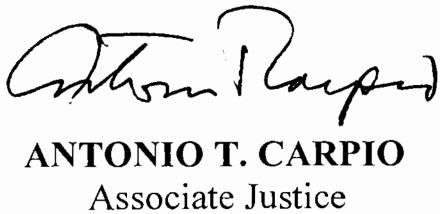


DIOSDADO M. PERALTA
Associate Justice

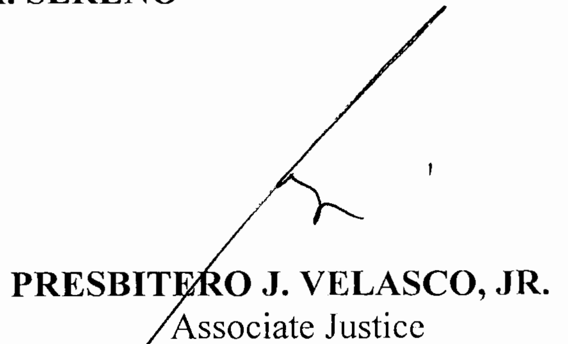
WE CONCUR:



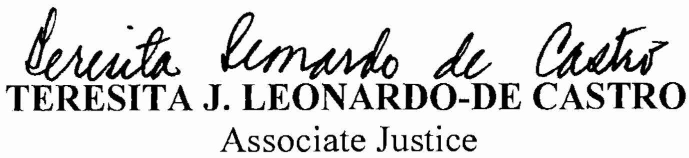
MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice



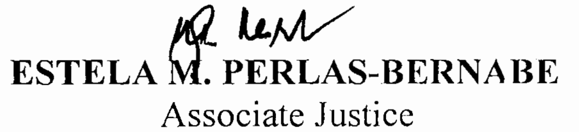
PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

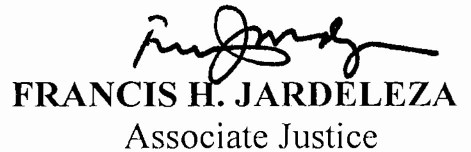
MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

See separate concurring opinion

MARVIC M.V.F. LEONEN
Associate Justice



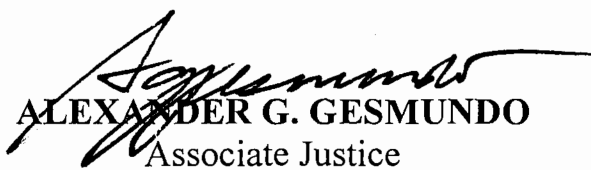
FRANCIS H. JARDELEZA
Associate Justice

On wellness leave
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

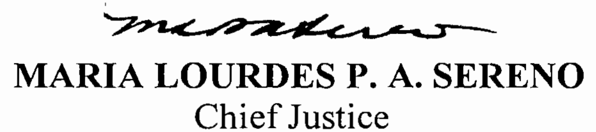
ANDRES B. REYES JR.
Associate Justice



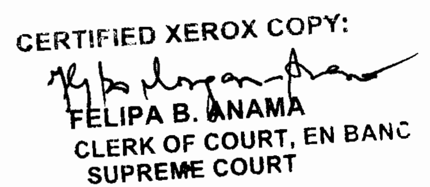
ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice



CERTIFIED XEROX COPY:
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT