Republic of the Philippines
Supreme Court
Manila

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

ERICK MONTIERRO *y* VENTOCILLA,
Respondent.
x----------x

CYPHER BALDADERA *y* PELAGIO,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.
x----------x

RE: LETTER OF THE PHILIPPINE JUDGES ASSOCIATION EXPRESSING ITS CONCERN OVER THE RAMIFICATIONS OF THE DECISIONS IN G.R. NO. 247575 AND G.R. NO. 250295

x----------x

RE: LETTER OF ASSOCIATE JUSTICE

G.R. No. 254564

G.R. No. 254974

A.M. No. 21-07-16-SC

A.M. No. 18-03-16-SC

DIOSDADO M. PERALTA ON THE SUGGESTED PLEA BARGAINING FRAMEWORK SUBMITTED BY THE PHILIPPINE JUDGES ASSOCIATION

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

Promulgated:

July 26, 2022

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DECISION

CAGUIOA, *J.*:

Before the Court are the consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court: (1) in G.R. No. 254564, the People of the Philippines, through the Office of the Solicitor General (OSG), assails the Decision[2] dated February 27, 2020 and the Resolution[3] dated October 27, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 158301; and (2) in G.R. No. 254974, petitioner Cypher Baldadera *y* Pelagio (Baldadera) assails the Decision[4] dated July 1, 2020 and the Resolution[5] dated November 26, 2020 of the CA in CA-G.R. SP No. 158032. Likewise before the Courts are the following: (*i*) Letter[6] dated July 5, 2021 sent by the Philippine Judges Association (PJA), and (*ii*) Memorandum[7] dated October 8, 2021 from then Court Administrator (now Associate Justice) Jose Midas P. Marquez seeking the Court's assistance and clarification on the repercussions

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1 *Rollo* (G.R. No. 254564), pp. 9-36 and *rollo* (G.R. No. 254974), pp. 11-34.
2 *Rollo* (G.R. No. 254564), pp. 37-45. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Franchito N. Diamante and Walter S. Ong concurring.
3 Id. at 47-48.
4 *Rollo* (G.R. No. 254974), pp. 36-50. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Zenaida T. Galapate-Laguilles and Florencio M. Mamauag, Jr. concurring.
5 Id. at 52-53.
6 *Rollo* (A.M. No. 21-07-16-SC), pp. 1-5.
7 *Rollo (*A.M. No. 18-03-16-SC), pp. 152-154.

of the Court's rulings in *People v. Reafor*[8] (*Reafor*) and *People v. Borras*[9] (*Borras*).

The Antecedents

Baldadera was charged with violation of Section 5, Article II of Republic Act (RA) No. 9165,[10] before Branch 24, Regional Trial Court of Naga City (RTC), docketed as Criminal Case No. 2017-0210. The accusatory portion of the Information reads:

> That on or about March 9, 2017, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully and criminally sell and handed one (1) pc. [s]mall size heat-sealed transparent plastic sachet containing white crystalline substance marked as MAS 3-9-17 with signature, weighing more or less 0.048 gram, in exchange for one (1) pc. Five Hundred Peso Bill (Php500.00) with Serial Number B2850766, to poseur-buyer PO1 MICHAEL A. SOLA, which when subjected to laboratory examination yielded positive for the presence of Methamphetamine Hydrochloride, popularly known as 'Shabu,' a dangerous drug, in violation of the above-cited law.
>
> ACTS CONTRARY TO LAW.[11]

Meanwhile, the Information filed against respondent Erick Montierro y Ventocilla (Montierro) with the RTC, charging him with violation of Section 5, Article II of RA No. 9165, docketed as Criminal Case No. 2017-0082, states:

> That on or about **January 25, 2017**, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully and criminally sell, dispense and deliver **three (3) pcs. [M]edium heat-sealed transparent plastic sachet containing white crystalline substance marked as EMV 1-25-17 weighing 0.306 gram; EMV-1 1-25-17 weighing 0.123 gram and EMV-2 1-25-17 weighing 0.292 gram, respectively** with a total weight of **0.721 gram** in exchange of boodle money with Five Hundred Peso bill (Php500.00) with Serial No. **S545275** to poseur-buyer **SPO2 CLIFFORD A. DE JESUS**, which when tested were found positive for the presence of Methamphetamine Hydrochloride popularly known as **"Shabu"**, a dangerous drug, in violation of the above-cited law.

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8 G.R. No. 247575, November 16, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67092>.

9 G.R. No. 250295, March 15, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66974>.

10 AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, otherwise known as the "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," approved on June 7, 2002.

11 *Rollo* (G.R. No. 254974), p. 37.

ACTS CONTRARY TO LAW.[12]

During arraignment, Baldadera and Montierro separately pleaded not guilty. After the termination of the pre-trial, the prosecution in each of the cases presented and formally offered its respective evidence.[13]

During the pendency of the above criminal cases, the Court *En Banc*, on August 15, 2017, promulgated its Decision in *Estipona, Jr. v. Lobrigo*[14] (*Estipona*) where it declared Section 23 of RA No. 9165 as unconstitutional for being contrary to the rule-making authority of the Supreme Court under Section 5(5), Article VIII of the 1987 Constitution.[15] This declaration meant that plea-bargaining was permitted in drugs cases.

On November 21, 2017, the Department of Justice (DOJ) issued Department Circular No. 061-17[16] (DOJ Circular No. 61), prohibiting plea bargaining for violations of Section 5 of RA No. 9165 or in cases of illegal sale of dangerous drugs regardless of its quantity.

On April 10, 2018, pursuant to its rule-making power under the 1987 Constitution, the Court promulgated A.M. No. 18-03-16-SC[17] or the Plea Bargaining Framework in Drugs Cases. According to the Plea Bargaining Framework in Drugs Cases, an accused charged with violation of Section 5 of RA No. 9165 is allowed to plea bargain only when the quantity involved is 0.01 gram to 0.99 gram of methamphetamine hydrochloride or *shabu*, and for which, the acceptable plea bargain is Section 12 of RA No. 9165 or illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs punishable by six (6) months and one (1) day to four (4) years and a fine ranging from ₱10,000.00 to ₱50,000.00.

On June 26, 2018, the DOJ issued Department Circular No. 027-18[18] (DOJ Circular No. 27) amending DOJ Circular No. 61. According to DOJ Circular No. 27, for the charge under Section 5 of RA No. 9165, the acceptable plea bargain is the offense under Section 11, paragraph 3 or illegal possession

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12 *Rollo* (G.R. No. 254564), p. 104.

13 Id. at 50-53; *rollo* (G.R. No. 254974), pp. 92-96.

14 816 Phil. 789 (2017).

15 Id.; Constitution, Art. VIII, Sec. 5(5) provides:

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

16 GUIDELINES ON PLEA BARGAINING AGREEMENT FOR R.A. NO. 9165 OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF [2002]."

17 ADOPTION OF THE PLEA BARGAINING FRAMEWORK IN DRUGS CASES, dated April 10, 2018.

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

of dangerous drugs with an indeterminate penalty of twelve (12) years and one (1) day to twenty (20) years and a fine from ₱300,000.00 to ₱400,000.00.

G.R. No. 254564

RTC proceedings

Montierro filed with the RTC a proposal for plea bargaining[19] offering to enter a guilty plea to the lesser offense under Section 12 of RA No. 9165 pursuant to the terms of the Plea Bargaining Framework in Drugs Cases since the total weight of the *shabu* seized from him was only 0.721 gram.[20]

The prosecution objected to the offer, citing Regional Order No. 027-E-18 dated May 17, 2018 mandating prosecutors to ensure conformity of plea bargaining agreements with the guidelines set under DOJ Circular No. 61 which, in turn, categorically bars plea bargaining for Section 5 offenses.[21]

In an Order[22] dated June 27, 2018, the RTC granted Montierro's plea bargaining proposal, finding that the prosecution's opposition thereto has no valid factual and legal basis. The RTC also declared DOJ Circular No. 61 and Regional Order 027-E-18 as contrary to the Rules of Court and an encroachment on the rule-making power of the Supreme Court.[23]

Consequently, Montierro was re-arraigned, after which he pleaded guilty to violating Section 12 of RA No. 9165.[24]

On July 11, 2018, the RTC, despite the oral objection of the prosecutor, issued an Order[25] setting the promulgation of judgment on August 1, 2018.[26]

This time invoking DOJ Circular No. 27, which only allows Section 5 violators to plead guilty to Section 11, paragraph 3 and not Section 12 of RA No. 9165, the prosecution sought to reconsider[27] the Order dated July 11, 2018. The prosecution insisted that pursuant to Section 2,[28] Rule 116 of the Rules of Court, the consent of the prosecutor and the offended party are required in plea bargaining agreements.[29]

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19 *Rollo* (G.R. No. 254564), p. 54.
20 Id.
21 Id. at 55-56.
22 Id. at 69-72. Penned by Judge Leo L. Intia.
23 Id. at 70-71.
24 *See* Order dated July 11, 2018, id. at 73-74.
25 Id.
26 Id. at 74.
27 Motion for Reconsideration dated July 30, 2018, id. at 77-79.
28 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.
29 Id.

In its Order dated August 13, 2018, the RTC denied the prosecution's Motion for Reconsideration. The RTC declared that DOJ Circular No. 27 is contrary to the Rules of Court and is an encroachment on the rule-making power of the Supreme Court to the extent that it contradicts the Plea Bargaining Framework in Drugs Cases. According to the RTC, DOJ Circular No. 27 effectively vitiates the prosecutor's consent to the plea bargain, as non-compliance therewith translates to disobedience to the superior officer who issued the circular.[30]

Thereafter, the RTC, on August 29, 2018, rendered a Judgment[31] convicting Montierro for the lesser offense of illegal possession of drug paraphernalia under Section 12[32] of RA No. 9165.[33]

CA proceedings

On *certiorari* before the CA, the CA dismissed the prosecution's petition.[34] First, the CA deemed as waived, for not having been raised before the RTC, the argument of the OSG that one of the reasons why the prosecution opposed Montierro's plea bargain was that there was sufficient evidence to convict him of the crime charged.[35]

Second, the CA held that no grave abuse of discretion may be attributed to the RTC when it found that the prosecution's objection to Montierro's plea bargain had no leg to stand on.[36] According to the CA, the RTC's finding that DOJ Circular No. 27 encroaches upon the Supreme Court's rule-making power finds basis both in the fundamental law and existing jurisprudence.[37] Further, the CA agreed with the RTC that under DOJ Circular No. 27, the prosecutor would not have been free to consent to Montierro's plea bargain because the prosecutor is bound by his oath of office and is mandated to follow DOJ Circular No. 27 under pain of being administratively charged for disobedience.[38]

In a Resolution[39] dated October 27, 2020, the CA denied the OSG's Motion for Reconsideration.

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30 Id. at 39.
31 Id. at 82-83. Penned by Acting Presiding Judge Leo L. Intia.
32 RA 9165, Sec. 12 provides:

> xxxx
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> The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

33 Id.
34 Id. at 37-45.
35 Id. at 42.
36 Id. at 42-44.
37 Id. at 44.
38 Id. at 43.
39 Id. at 47-48.

Hence, the petition docketed as G.R. No. 254564.[40]

G.R. No. 254974

RTC Proceedings

On June 20, 2018, Baldadera submitted before the RTC a plea bargaining proposal to enter a plea of guilty to the lesser offense under Section 12, Article II of RA No. 9165, considering that the quantity of *shabu* involved in Criminal Case No. 2017-0210 was only 0.048 gram.[41]

On June 21, 2018, the prosecutor objected to Baldadera's plea bargaining proposal in view of the guidelines under DOJ Circular No. 61, which prohibits prosecutors of the DOJ handling drugs cases from entering into a plea bargaining for violation of Section 5 of RA No. 9165.[42]

In an Order[43] dated June 27, 2018, the RTC granted Baldadera's plea bargaining proposal to plead guilty to a lesser offense. The RTC held that DOJ Circular No. 61 is contrary to the Plea Bargaining Framework in Drugs Cases, thus encroaching upon the rule-making power of the Supreme Court.[44]

On July 18, 2018, the RTC vacated Baldadera's former plea and, notwithstanding the objection of the prosecution grounded on DOJ Circular No. 61, allowed Baldadera to plead guilty to the offense of violation of Section 12 of RA No. 9165.[45]

The prosecution moved for reconsideration on the ground of lack of consent to the plea bargaining proposal, which is an indispensable requirement under Section 2, Rule 116 of the Rules of Court.[46]

In an Order[47] dated August 13, 2018, the RTC denied the prosecution's motion for reconsideration. The RTC ruled that DOJ Circular No. 27, which revised DOJ Circular No. 61, is in conflict with the Plea Bargaining Framework in Drugs Cases and an encroachment on the rule-making power of the Supreme Court enshrined in the Constitution. While the Plea Bargaining Framework in Drugs Cases allows the accused to plead guilty to a lesser offense of violation of Section 12, Article II of RA No. 9165 if the quantity of *shabu* is less than one gram despite being charged with violation of Section 5, Article II of RA No. 9165, DOJ Circular No. 27 only allows the accused to plead guilty to a lesser offense of violation of Section 11, paragraph

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40 Id. at 9-36.
41 *Rollo* (G.R. No. 254974), pp. 78-79.
42 Id. at 74.
43 Id. at 74-77.
44 Id. at 76-77.
45 Id. at 82.
46 Motion for Reconsideration dated August 2, 2018, id. at 87-89.
47 Id. at 80-86.

3, Article II of RA No. 9165. The RTC explained that the non-consent to the plea bargaining by the prosecution is vitiated by DOJ Circular No. 27.[48]

On August 23, 2018, due to Baldadera's plea of guilty to the offense of violation of Section 12 of RA No. 9165, the RTC rendered judgment convicting Baldadera for violation of Section 12, Article II of RA No. 9165.[49] Baldadera was imposed the penalty of imprisonment of six (6) months and one (1) day as minimum to four (4) years as maximum. He was further ordered to pay a fine of Fifty Thousand Pesos (₱50,000.00) and directed to submit himself to a drug dependency test and undergo treatment and rehabilitation if he admits drug use, or denies it but is found positive after the drug dependency test.[50]

CA Proceedings

The People, through the OSG, filed with the CA a Petition for *Certiorari* assailing the afore-stated Orders and Judgment of the RTC, docketed as CA-G.R. SP No. 158032.

On July 1, 2020, the CA rendered its Decision,[51] the dispositive portion of which reads:

> **ACCORDINGLY**, the petition is **GRANTED** and a writ of *certiorari* is hereby issued **NULLIFYING** and **SETTING ASIDE** the assailed Orders dated June 27, 2018 and August 13, 2018 as well as the Judgment dated August 23, 2018, rendered by respondent Judge in Criminal Case No. 2017-0210. The Regional Trial Court, Branch 24 of Naga City is **DIRECTED** to proceed with dispatch with the reception of defense evidence and to render judgment based on the evidence presented by the parties.
>
> **SO ORDERED.**[52]

In setting aside the Orders and Judgment of the RTC, the CA highlighted the ruling in *Estipona* that a plea of guilty to a lesser offense is only allowed with the express consent of the prosecution in accordance with Section 2, Rule 116 of the Rules of Court.[53] While recognizing as valid the RTC's holding that the Plea Bargaining Framework in Drugs Cases prevails over DOJ Circular No. 27, the CA nevertheless held that the consent of the prosecutor is a condition *sine qua non* for the validity of plea bargaining agreement in drugs cases.[54]

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48 Id.
49 Judgment dated August 23, 2018, id. at 90-91. Penned by Acting Presiding Judge Leo L. Intia.
50 Id.
51 Id. at 36-50.
52 Id. at 49.
53 Id. at 45-46.
54 Id. at 47.

The CA further found that the RTC judge acted with grave abuse of discretion when he granted the plea to a lesser offense without requiring Baldadera to submit to a drug dependency test pursuant to A.M. No. 18-03-16-SC and without evaluating the evidence of the prosecution.[55]

In a Resolution[56] dated November 26, 2020, the CA denied Baldadera's Motion for Reconsideration.

Hence, the petition docketed as G.R. No. 254974.[57]

The Petitions

In G.R. No. 254564, the OSG argues that DOJ Circular No. 27 is valid and does not encroach upon the rule-making power of the Court.[58] It submits that DOJ Circular No. 27 merely sets the uniform guidelines to be used by prosecutors in entering into plea bargaining agreements and that it is not a rule of procedure. DOJ Circular No. 27 is a policy direction set by the Secretary of Justice in view of the government's intensified campaign to curb problems in illegal drugs.[59] The OSG posits that the Plea Bargaining Framework in Drugs Cases merely refers to the lowest possible crime that the accused may plead guilty to. Thus, the courts may allow a plea of guilty to a more serious offense but which is still lesser than the offense originally charged.[60]

Further, the OSG stresses that the consent of the prosecution and the offended party are still necessary for a valid plea bargain. It is this "mutually satisfactory disposition of the case"[61] that is submitted for the court for its approval. Since, in these cases, the prosecution vigorously objected to the plea bargaining, there is nothing for the court to approve.[62]

In G.R. No. 254974, Baldadera insists that the prosecution abused its discretion when it refused to give consent to plea bargaining on the ground that DOJ Circular Nos. 61 and 27 prohibit prosecutors from entering into a plea bargain for violation of Section 5 of RA No. 9165.[63] He maintains that the *shabu* allegedly taken from him falls within the 0.01 gram to 0.99 gram threshold provided for under the Plea Bargaining Framework in Drugs Cases as the contraband involved is only 0.048 gram.[64] He argues that it is incorrect to say that the consent of the prosecutor and the offended party is indispensable for the validity of the plea bargaining to a lesser offense as this view is tantamount to a surrender of the court's role and supreme authority to

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55 Id. at 47-49.
56 Id. at 52-53.
57 Id. at 11-34.
58 *Rollo* (G.R. No. 254564), pp. 17-19.
59 Id. at 18.
60 Id. at 30.
61 Id. at 19.
62 Id. at 19-24.
63 *Rollo* (G.R. No. 254974), p. 19.
64 Id.

command the course of the case.[65] He also claims that the Plea Bargaining Framework in Drugs Cases neither required a drug dependency test for plea bargaining, nor made it a condition *sine qua non* before the prosecution gives consent to a plea bargain.[66]

Meanwhile, in A.M. No. 21-07-16-SC, the PJA expresses concern that the Court's ruling in the cases of *Reafor* and *Borras* will render the Plea Bargaining Framework in Drugs Cases a dead-letter rule as it practically obliterates plea bargaining in illegal drugs cases which was otherwise allowed under *Estipona.*[67] The PJA highlights that plea bargaining in drugs cases helps achieve the twin-purpose of the law — to result in a conviction and to provide an opportunity for rehabilitation and restorative justice.[68] On the other hand, the PJA explains that the recent Court issuances, which allow a prosecutor to withhold consent on the basis of DOJ Circular No. 27, may lead to possible injustice. The PJA points out that compared to a man charged with Murder, who may plead to the lesser offense of Death caused by Tumultuous Affray under Article 251 of the Revised Penal Code, which may make him eligible for parole, a man accused of violating Sections 5 and 11 of RA No. 9165 involving two sachets of 0.1 gram of *shabu* will be condemned for the rest of his life and will be deprived of his political and civil rights because he cannot avail of plea bargaining under the Court's Plea Bargaining Framework in Drugs Cases due to its conflict with DOJ Circular No. 27.[69]

In its Resolution[70] dated November 9, 2021, the Court ordered the consolidation of the petitions in G.R. No. 254974 and G.R. No. 254564, and A.M No. 21-07-16-SC.

On February 15, 2022, finding the relation of issues in A.M. No. 18-03-16-SC, the Court consolidated said case to the present cases.[71] In A.M. No. 18-03-16-SC, a memorandum dated October 8, 2021 from then Court Administrator (now Associate Justice) Jose Midas P. Marquez seeks clarification from the Court on whether the ruling in *Reafor* can be basis for the judges to overturn, on motion for reconsideration, plea bargaining proposals which were approved without the consent of the prosecution.[72]

Issues

Parsed from the submissions of the parties, the critical issues raised before the Court are:

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65 Id. at 22.
66 Id. at 25-26.
67 *Rollo* (A.M. No. 21-07-16-SC), p. 1.
68 Id. at 2-3.
69 Id. at 3.
70 *Rollo* (G.R. No. 254564), pp. 141-142.
71 *Rollo* (A.M. No. 18-03-16-SC), pp. 155-156.
72 Id. at 152-154.

1. Whether the trial courts erred in declaring DOJ Circular Nos. 61 and 27 invalid for encroaching upon the Court's rule-making power;

2. Whether the RTC erred in approving Montierro and Baldadera's plea bargaining applications despite the continuing objection of the prosecution on the ground that DOJ Circular No. 27 prohibits plea bargaining for illegal sale of dangerous drugs under Section 5 to the lesser offense of illegal possession of drug paraphernalia under Section 12 of RA No. 9165;

3. Whether the requirement of mutual agreement of the parties for a valid plea bargaining is inconsistent with the objective of RA No. 9165 of rehabilitating a drug offender accused of violating the law involving small quantity of drugs; and

4. Whether a drug dependency test is a pre-requisite for the approval of a plea bargaining proposal.

The Court's Ruling

At the very outset, the Court takes judicial notice of DOJ Department Circular No. 18[73] dated May 10, 2022 (DOJ Circular No. 18), which took effect on the same date. It appears that DOJ Circular No. 18 amended DOJ Circular No. 27 to conform to the Court-issued Plea Bargaining Framework in Drugs Cases.

Under DOJ Circular No. 27, an accused charged with violation of Section 5 of RA No. 9165 (for less than 5 grams of *shabu* or less than 300 grams of marijuana) may plead guilty to a lesser offense under Section 11, paragraph 3 or *Possession of Dangerous Drugs*; whereas, under the Court's Plea Bargaining Framework in Drugs Cases, the acceptable plea for violation of Section 5 of RA No. 9165 (for 0.01 gram to 0.99 gram of *shabu* or 0.01 gram to 9.99 grams of marijuana) is the lesser offense of *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs* under Section 12 of RA No. 9165. **This inconsistency was reconciled in DOJ Circular No. 18, where the acceptable plea for violation of Section 5 of RA No. 9165 is now Section 12 of RA No. 9165, which is in accordance with the Court's Plea Bargaining Framework in Drugs Cases.**

With the amendments introduced in DOJ Circular No. 18, the prosecution's objection to Montierro and Baldadera's plea bargaining proposals, which was based solely on DOJ Circular No. 27, can now be considered as effectively withdrawn. As such, the issues of whether the RTC

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[73] REVISED AMENDED GUIDELINES ON PLEA BARGAINING FOR REPUBLIC ACT NO. 9165 OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

erred in declaring DOJ Circulars No. 61 and 27 invalid and overruling the prosecution's continuing objection to Montierro and Baldadera's plea bargaining proposals are now rendered moot and academic.

Nevertheless, when a case or an issue becomes moot, jurisprudence provides that the Court will still rule on the case when any of the following circumstances is present:

> *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.[74]

In the present case, all four of the above circumstances obtain.

First, to give primacy to the DOJ policy as provided in DOJ Circulars over the exclusive rule-making power of the Court is to gravely contravene the Constitution and evade that same constitutional power. To be sure, the evolving Philippine Constitutions demonstrably showed the increasing empowerment and independence of the Supreme Court, as the Court traced in the case of *Echegaray v. Secretary of Justice*:[75]

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

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74 *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, 791 Phil. 243, 259 (2016).

75 361 Phil. 73 (1999).

> 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.** If the manifest intent of the 1987 Constitution is to strengthen the independence of the judiciary, it is inutile to urge, as public respondents do, that this Court has no jurisdiction to control the process of execution of its decisions, a power conceded to it and which it has exercised since time immemorial.[76] (Emphasis supplied; citations omitted)

As the Court in *Echegaray* emphatically noted, the Constitution did not patently strengthen the exclusive rule-making power of the Court only for the Court itself to neglect it or, worse, diminish it by its own concession.

Second, the exceptional character and overarching public interest that is cast over the issue at hand are demonstrated by the fact that, as the Court appreciated in the case of *Almora v. Dela Rosa*,[77] executive policies with respect to apprehension and prosecution rising from the drug war go into the very matters of fundamental constitutional rights, to wit:

> The resolution of the present petitions by this Court, if made with the benefit of a facial perusal of the pre- and post-operations police reports relating to the 20,322 officially confirmed deaths in the anti-drug war from July 1, 2016 to November 27, 2017, will allow this Court to perform its constitutional duty to "promulgate rules concerning the protection and enforcement of constitutional rights." The unusually high number of deaths in the anti-drug war requires a deeper understanding of the **"application or operation"** of PNP CMC 16-2016 and DILG Memorandum Circular (MC) 2017-112 in order to devise a more effective protection, and a more enhanced enforcement of fundamental constitutional rights.[78]

Third, the case is capable of repetition yet evading review because the DOJ may again issue regulations posed as "internal guidelines" for its prosecutors, which regulation may once again conflict with the Court's exclusive power to issue rules and regulations on plea bargaining.

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[76] Id. at 88-89.
[77] G.R. Nos. 234359 & 234484, April 3, 2018. (Unsigned Resolution)
[78] Id.

And fourth, there is a need to rule on this issue to guide the bench, the bar, and the public, and in light of the concerns raised by the PJA in relation to the Court's ruling in the cases of *Reafor* and *Borras*.

To be sure, the Court can dismiss the instant petitions, but the present consolidated cases are the opportune time for the Court to reiterate and assert its exclusive rule-making power in the plea bargaining process, as recognized in the cases of *Estipona* and *Sayre v. Xenos*[79] (*Sayre*). Furthermore, given the several cases pending before trial courts involving the same issue, the Court is called upon to clarify its rulings in *Estipona* and *Sayre vis-à-vis* other cases such as *Reafor* and *Borras*, which appear to have caused confusion among trial judges.

During the deliberations for this case, it was suggested that the Court should simply rule that the present petitions are moot and academic, and to order the remand of the case to the trial courts to secure the prosecution's consent. Doing these, however, would amount to the Court's castration of itself in favor of the Executive. Effectively, albeit indirectly, the Court would be abdicating its exclusive rule-making power in favor of the prosecution. *Estipona* and *Sayre* would unquestionably become useless and rendered nugatory.

Finally, for the Court to simply dismiss despite the discernment of a clear controversy that is capable of repetition, and therefore requires a definitive ruling, is not merely an abdication of its power but more so a repudiation of its responsibility to play its crucial role in checking and balancing the exercise of the powerful machinery of the State. Thus, the Court discerns a need to set forth certain guidelines in plea bargaining in drugs cases.

Plea Bargaining is a rule of procedure
within the Court's exclusive domain

It is already well-settled, as stated in the case of *Estipona*, that plea bargaining in criminal cases, by nature and tradition, is squarely a rule of procedure which falls within the Court's exclusive rule-making power as provided under Section 5(5), Article VIII of the 1987 Constitution.

Tracing its roots in our jurisdiction, the Court, in *Estipona*, recognized that plea bargaining has always been part of Philippine rules of procedure since 1940 and was subsequently carried over to the 1964 Rules of Court, the 1985 and the current 2000 Rules of Criminal Procedures, *viz.*:

> 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:

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[79] G.R. Nos. 244413, 244415-16, February 18, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66133>.

> 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:

> 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.

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."

x x x x

Currently, the pertinent rules on plea bargaining under the 2000 *Rules* 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 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)[80] (Emphasis and underscoring supplied)

The Court further explained in *Estipona* that the basic premise for the adoption of plea bargaining in our jurisdiction is the furtherance of the constitutionally guaranteed right to speedy disposition of cases, which benefits not only the accused but the State and the offended party as well, *viz.*:

> **By the same token, it is towards the provision of a simplified and inexpensive procedure for the speedy disposition of cases in all courts 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**

[80] *Estipona, Jr. v. Lobrigo*, supra note 14, at 806-808.

"legitimate" component of the administration of justice. 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." There is give-and-take negotiation common in plea bargaining. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses. 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. [81] (Emphasis supplied; citations omitted)

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[81] Id. at 812-813.

Undeniably, plea bargaining in criminal cases is an essential component of the administration of justice. An accused enters into a plea bargaining agreement by admitting his/her guilt with the hope of securing a more lenient punishment, and possibly probation, should the offer be accepted and approved by the court. As such, the tedious process and protracted trial is shortened and the accused is promptly given a chance at rehabilitation, redemption and reintegration to society. In the same way, plea bargaining benefits the State as the prosecution secures a final conviction with very minimal to nil use of its time and resources. Plea bargaining in criminal cases is clearly a procedural mechanism geared towards promoting an efficient, inexpensive and speedy disposition of cases.

A.M. No. 18-03-16-SC or the Plea Bargaining Framework in Drugs Cases issued by the Court takes precedence over DOJ Circular No. 27 or any other similar issuance

With these salutary benefits of plea bargaining, the Court, in the exercise of its exclusive rule-making power, promulgated the Plea Bargaining Framework in Drugs Cases, which specifically prescribes the offenses under RA No. 9165 subject to plea bargaining and their corresponding acceptable plea bargains.

This framework was drawn from the Court's wisdom, as the impartial tribunal in the equation of justice, and its objective assessment and evaluation of the middle ground between the right of the State to prosecute offenders of its laws, on the one hand, and, on the other, the rights of the accused to be presumed innocent until proven guilty.

To be sure, a pragmatic rationale for the plea bargaining mechanism is the Court's ongoing efforts to decongest the court dockets. As described by former Chief Justice Diosdado M. Peralta, the underlying objective of both the Court's pronouncement in *Estipona* and OCA Circular No. 90-2018 was precisely to ease the load of the dockets and the penal system. In elucidating on the reason behind the availability of Section 12 (*Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*) as an acceptable bargain for Section 5 (*Sale, Trading, etc. of Dangerous Drugs: Metamphetamine hydrochloride or shabu),* then Chief Justice Peralta explained:

> It bears emphasis that the main reason of the Court in stating in OCA Circular No. 90-2018 dated April 10, 2018 that "plea bargaining is also not allowed under Section 5 (*Sale, trading etc.* of Dangerous Drugs) involving all other kinds of dangerous drugs, except *shabu* and marijuana" lies in the diminutive quantity of the dangerous drugs involved. Taking judicial notice of the volume and prevalence of cases involving the said two (2) dangerous drugs, as well as the recommendations of the officers of PJA, the Court is

> of the view that illegal sale of 0.01 gram to 0.99 of methamphetamine hydrochloride (*shabu*) is very light enough to be considered as necessarily included in the offense of violation of Section 12 (*Possession of Equipment, Instrument, Apparatus and other Paraphernalia for Dangerous Drugs),* while 1.00 gram and above is substantial enough to disallow plea bargaining. The Court holds the same view with respect to illegal sale of 0.01 gram to 9.99 grams of marijuana, which likewise suffices to be deemed necessarily included in the same offense of violation of the same Section 12 of R.A. No. 9165, while 10.00 grams and above is ample enough to disallow plea bargaining.[82]

This judicial notice arose from the Court's observation of a plethora of acquittals that have been promulgated by the Court, especially in the recent years. In these exemplifying cases, persons charged with Section 5, Article II of RA No. 9165 were often apprehended and incarcerated for a measly amount of drugs between 0.01 gram to 0.99 gram in weight. More, these persons languished in jails for years, only to be acquitted upon appeal to the Supreme Court because the prosecution failed to strictly comply with the mandatory requirements of Section 21 of RA No. 9165.

What is, therefore, paramount to understand is the Court's wisdom arising from what it has seen in the drive against illegal drugs. That same wisdom dovetailed with the practical benefit of decongesting the court dockets. To restate, the Court, in its wisdom, promulgated OCA Circular No. 90-2018 which provides a one-to-one correspondence between the original offense charged, on the one hand, to the plea bargain offense, on the other. Illustratively, for a charge of Section 5, if the seized drug involved is between 0.01 gram to 0.99 gram, the Court finds the acceptable bargain to be a plea of guilty to a violation of Section 12 (illegal possession of drug paraphernalia) and not a plea to a violation of Section 11 (illegal possession of drugs).

Still and all, the Court, citing the Separate Opinion of Justice Marvic M. V. F. Leonen in *Estipona*, laid down in the case of *Sayre* the following:

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of *shabu* under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug

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[82] *Re: Letter of Associate Justice [(now retired Chief Justice)] Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*, A.M. No. 18-03-16-SC, April 2, 2019.

> menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[83]

To recall, the Court also made clear in *Sayre* that the framework pertaining to the plea bargaining process falls squarely and exclusively within the jurisdiction of the courts, and while the DOJ may affect the propositions within the same in its internal guidelines, the rule-making power of the Court in the plea bargaining process nevertheless takes precedence over any other issuance that pertains to it, *viz.*:

> In this petition, A.M. No. 18-03-16-SC is a rule of procedure established pursuant to the rule-making power of the Supreme Court that serves as a framework and guide to the trial courts in plea bargaining violations of R.A. 9165.
>
> Nonetheless, a plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court. The acceptance of an 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 trial court.
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> Section 2, Rule 116 of the Rules of Court expressly states:
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> > 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. x x x
>
> **The use of the word "may" signifies that the trial court has discretion whether to allow the accused to make a plea of guilty to a lesser offense.** Moreover, plea bargaining requires the consent of the accused, offended party, and the prosecutor. It is also essential that the lesser offense is necessarily included in the offense charged.
>
> Taking into consideration the requirements in pleading guilty to a lesser offense, **We find it proper to treat the refusal of the prosecution to adopt the acceptable plea bargain for the charge of Illegal Sale of Dangerous Drugs provided in A.M. No. 18-03-16-SC as a continuing objection that should be resolved by the RTC**. This harmonizes the constitutional provision on the rule making power of the Court under the Constitution and the nature of plea bargaining in Dangerous Drugs cases. DOJ Circular No. 27 did not repeal, alter, or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC.[84] (Emphasis supplied; citations omitted)

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[83] Separate Opinion of Associate Justice Marvic M.V.F. Leonen in *Estipona, Jr. v. Lobrigo*, supra note 14, at 819.

[84] *Sayre v. Xenos*, supra note 79.

Furthermore, and lest it be mistaken, the exclusivity of the power to promulgate rules on plea bargaining only recognizes the role of the judiciary under our Constitutional framework as the ***impartial tribunals*** that try to balance the right of the State to prosecute offenders of its laws, on the one hand, and the right of individuals to be presumed innocent until proven guilty, on the other. This in no way undermines the prosecutorial power of the DOJ, which has the mandate to prosecute suspected criminals to the full extent of the law. In discharging this role, the prosecutor, representing one of the parties to the negotiation, cannot thus be expected to fully see the "middle ground." It is here where the courts are therefore in the best position to determine what is fair and reasonable under the circumstances. Ultimately, it is the Court which has the power to promulgate the rules on plea bargaining.

This much is affirmed by the issuance of the aforementioned DOJ Circular No. 18 dated May 10, 2022, which accordingly revised DOJ Circular No. 27 in order to conform the same to the Court's Plea Bargaining Framework in Drugs Cases.

Accordingly, while the Court in *Sayre* did not declare DOJ Circular No. 27 as unconstitutional, being a mere internal guideline that does not encroach upon the Court's rule-making power, the Court clarifies that any plea bargaining framework it promulgates is accorded primacy.

With these principles in mind, the Court shall now set forth the following guidelines in plea bargaining in drugs cases.

Plea bargaining requires the consent of the parties but the approval thereof is subject to the sound discretion of the court

In defining plea bargaining in criminal cases, jurisprudence has always referred to it as a process of arriving at "a mutually satisfactory disposition of the case subject to court approval."[85] Thus, mutual consent of the prosecution and the offended party, on the one hand, and the defendant, on the other, has always been emphasized as a condition precedent or an indispensable requirement to a valid plea of guilty to a lesser offense.[86]

This requirement of mutual consent was further highlighted in *Sayre*, where the Court found that the trial court judge did not act with grave abuse of discretion in not approving the plea bargain of the accused due to the continuing objection of the prosecution, which was based on the conflicting provisions between DOJ Circular No. 27 and the Plea Bargaining Framework in Drugs Cases. The Court held that "[b]ecause of this continuing objection,

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[85] See *People v. Villarama, Jr.*, 285 Phil. 723, 730 (1992); *People v. Reafor*, supra note 8; *Gonzales III v. Office of the President of the Phils.*, 694 Phil. 52, 106 (2012).

[86] Id. at 732.

the parties failed to arrive at a 'mutually satisfactory disposition of the case' that may be submitted for the [trial] court's approval. The RTC correctly ordered the continuation of the proceedings because there was no mutual agreement to plea bargain."[87]

As well, in the recent cases of *Reafor* and *Borras*, the Court, reiterating *Sayre,* remanded the cases for further proceedings because the parties failed to strike a mutual agreement on the matter. In both cases, similar to the present consolidated cases, the prosecution objected to the accused's respective plea bargaining proposals on the basis of the provisions of DOJ Circular Nos. 61 and 27. The trial courts, without resolving the prosecution's continuing objection, immediately convicted the accused under their respective pleas following the Court's Plea Bargaining Framework in Drugs Cases. The Court found that the trial courts acted with grave abuse of discretion and remanded the cases for further proceedings.

To recall, in A.M. No. 21-07-16-SC, the PJA expressed concern that the ruling in *Reafor* and *Borras* will render the Court's Plea Bargaining Framework in Drugs Cases a dead-letter rule because it practically obliterates plea bargaining in illegal drugs cases which was allowed and recognized in *Estipona.*

Again, as discussed, considering the amendments introduced under DOJ Circular No. 18, the issue on the conflicting provisions between DOJ Circular No. 27 and the Court's Plea Bargaining Framework in Drugs Cases insofar as Section 5 of RA No. 9165 is concerned has already been rendered moot and academic.

Nonetheless, to reconcile the perceived competing views and interpretations of these pronouncements in *Sayre* and in the more recent cases of *Reafor* and *Borras*, there is a need to clarify the prevailing rule and exception in plea bargaining in drugs cases.

Plea bargaining in criminal cases is governed by Section 2, Rule 116 of the Rules of Court, which provides:

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

Indeed, Section 2 requires the mutuality of agreement of the parties because consent of the prosecution and the offended party must be obtained

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87 *Sayre v. Xenos*, supra note 79.

in order for the accused to successfully plead guilty to a lesser offense. However, it should not be overlooked that Section 2 also uses the word "may," which signifies discretion on the part of the trial court on whether to allow the accused to make such plea.[88] As such, while plea bargaining requires the consent of the parties, the approval of a plea bargaining proposal is ultimately subject to the sound discretion of the court.

To be sure, jurisprudence had since emphasized the extent of the trial court's discretion in approving a plea bargain.

In the case of *People v. Villarama, Jr.*[89] (*Villarama*), while it was expressed that the consent of the Fiscal and the offended party is a condition precedent for a valid plea of guilty to a lesser offense because "[t]he Fiscal has full control of the prosecution of criminal actions,"[90] the Court also underscored that acceptance of an offer to plead guilty to a lesser offense is **a matter addressed entirely to the sound discretion of the trial court**. Underscoring the trial court's duty to review the circumstances of a case before it may act on an application to plea bargain, the Court held:

> However, the acceptance of an offer to plead guilty to a lesser offense under the aforequoted rule is not demandable by the accused as a matter of right but is a matter that is addressed entirely to the sound discretion of the trial court (*Manuel v. Velasco, et al.*, G.R. No. 94732, February 26, 1991, *En Banc* Resolution).
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> In the case at bar, the private respondent (accused) moved to plead guilty to a lesser offense after the prosecution had already rested its case. In such situation, jurisprudence has provided the trial court and the Office of the Prosecutor with a yardstick within which their discretion may be properly exercised. Thus, in *People v. Kayanan* (L-39355, May 31, 1978, 83 SCRA 437, 450), **We held that the *rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged.*** In his concurring opinion in *People v. Parohinog* (G.R. No. L-47462, February 28, 1980, 96 SCRA 373, 377), then Justice Antonio Barredo explained clearly and tersely the rationale o[f] the law:
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> > x x x (A)fter the prosecution had already rested, *the only basis on which the fiscal and the court could rightfully act in allowing the appellant to change his former plea of not guilty to murder to guilty to the lesser crime of homicide could be nothing more nothing less than the evidence already in the record.* The reason for this being that Section 4 of Rule 118 (now Section 2, Rule 116) under which a plea for a lesser offense is allowed was not and could not have been intended as a procedure for compromise, much less bargaining.
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> **As evident from the foregoing, the trial court need not wait for a guideline from the Office of the Prosecutor before it could act on the**

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88 See *Daan v. Sandiganbayan*, 573 Phil. 368, 376-377 (2008).
89 Supra note 85.
90 Id. at 732.

> **accused's motion to change plea. As soon as the fiscal has submitted his comment whether for or against the 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.** A reading of the disputed rulings in this case failed to disclose the strength or weakness of the prosecution's evidence. Apparently, the judgment under review dwelt solely on only one of the three objections (*i.e.* waste of valuable time already spent by the court and prosecution) interposed by the Fiscal which was the least persuasive. It must be recalled that the other two grounds of objection were that the prosecution had already rested its case and that the possibility of conviction of the private respondent of the crime originally charged was high because of the strong evidence of the prosecution. Absent any finding on the weight of the evidence in hand, the respondent judge's acceptance of the private respondent's change of plea is improper and irregular.[91] (Emphasis and italics supplied)

Villarama involved a plea bargaining proposal after the prosecution had rested its case. As regards plea bargaining during the pre-trial stage, the same remains subject to the discretion of the trial court. And the Court in the case of *Daan v. Sandiganbayan*,[92] explained that the exercise of the trial court's discretion must not be arbitrary nor should it amount to a capricious and whimsical exercise of discretion. The trial court's action on the plea bargaining proposal must be supported by valid reasons.[93]

Harmonizing the foregoing rulings, the Court, in *Estipona*, stressed anew the rule that plea bargaining requires mutual consent of the parties and remains subject to the sound of discretion of the court, *viz.*:

> Yet a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present *Rules*, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.
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> [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,"

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91 Id. at 730-731.
92 Supra note 88.
93 Id. at 378.

> we have been "properly hesitant to examine the decision whether to prosecute."
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> **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. 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.**
>
> Plea bargaining is allowed during the arraignment, the pre-trial, or even up to the point when the prosecution already rested its case. **As regards plea bargaining during the pre-trial stage, the trial court's exercise of discretion should not amount to a grave abuse thereof.** "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 a court or tribunal violates the Constitution, the law or existing jurisprudence.
>
> **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.** 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. The ruling on the motion must disclose the strength or weakness of the prosecution's evidence.** 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.[94] (Emphasis and underscoring supplied; citations omitted)

As can be gleaned from the foregoing, the trial court's discretion to act on plea bargaining proposal is independent from the requirement of mutual agreement of the parties. **Whether the prosecution is for or against the accused's proposal to plead guilty to a lesser offense, the trial court remains duty-bound to assiduously evaluate the qualifications of the accused and the circumstances of the case.**

The breadth of judicial discretion in approving a plea bargain, particularly in relation to offenses under RA No. 9165, was further elaborated upon in the Court *En Banc*'s Resolution dated April 2, 2019 entitled *Re: Letter of Associate Justice [(now retired Chief Justice)] Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges*

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[94] *Estipona, Jr. v. Lobrigo*, supra note 14, at 814-817.

Association. The Resolution addressed, among others, the apparent conflict between the trial court's discretion to allow plea bargaining under the guidelines of the Plea Bargaining Framework in Drugs Cases and the prosecution's objection thereto following DOJ Circular No. 27, to wit:

> The Court takes exception to the claim that allowance of plea bargaining over the objection of the prosecution, *"is alarming and a direct affront to the government's intensified campaign against the 'menace of illegal drugs' under President Rodrigo Roa Duterte because the courts concerned have, in effect, degraded the penalties provided by R.A. 9165 — particularly for violation of Section 5, Article II thereof — since the accused are allowed to plead guilty to violation of Section 12 only where the penalty is minimal and probationable. Section 5, Article II, of R.A. 9165 is being defanged/rendered toothless and the accused are merely given a 'slap-on-the-wrist' by the courts concerned. And, the efforts of the police and the Prosecution will be gone to waste."*
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> The Court explained in *Estipona* that it is towards the provision of a simplified and inexpensive procedure for the speedy disposition of cases in all courts that the rules on plea bargaining was introduced. x x x
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> x x x x
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> Significantly, plea bargaining is always addressed to the sound discretion of the judge, guided by Court issuances, like A.M. No. 18-03-16-SC dated April 10, 2018. **If the objection to the plea bargaining is solely to the effect that it will weaken the drug campaign of the government, then the judges may overrule such objection because they are constitutionally bound to settle actual controversies involving rights which are legally demandable and enforceable. Judges must decide cases based on evidence, law and jurisprudence, and they cannot just defer to the policy of another Branch of the government. However, if objections to the plea bargaining are valid and supported by evidence to the effect that the offender is a [recidivist], a habitual offender, or known in the community as a drug addict and a troublemaker, or one who has undergone rehabilitation but had a relapse, or has been charged many times, or when the evidence of guilt of the charge is strong, courts should not allow plea bargaining, because that will not help keep law and order in the community and the society. And just because the prosecution and the defense agree to enter into a plea bargain, it does not mean that the courts will approve the same. The judge must still exercise sound discretion in granting or denying plea bargaining, taking into account relevant circumstances, such as the character of the accused.**[95] (Emphasis and underscoring supplied)

Synthesizing the foregoing jurisprudential pronouncements, and cognizant of the ends of the plea bargaining process in drugs cases, the Court herein clarifies that the consent of the parties is necessary **but the approval of the accused's plea of guilty to a lesser offense is ultimately subject to the sound discretion of the court.** In the exercise of this discretion, the trial

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[95] *Re: Letter of Associate Justice [(now retired Chief Justice)] Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*, supra note 82.

court's duty is to evaluate the qualifications of the accused and the circumstances or evidence of the case. It is mandated to decide each case based on evidence, law, and jurisprudence, and to ensure that the applicant in a plea bargain is not: (1) a recidivist, (2) habitual offender, (3) known in the community as a drug addict and troublemaker, (4) one who has undergone rehabilitation but had a relapse, and (5) one who has been charged many times. Thus, plea bargaining cannot be approved when the accused is not qualified or the evidence of his/her guilt is strong.

Clearly, trial courts are in the best position to objectively and disinterestedly assess whether the facts, the evidence, and the circumstances of the accused necessitate a plea bargaining agreement. As impartial tribunals, courts are in the best position to ultimately determine the propriety of plea bargaining in each case.

In this regard, courts are not bound by any resolution or administrative issuance that the Secretary of Justice may promulgate. It is within the sole ambit of the Court's discretion to impose rules governing the proceedings — including the Plea Bargaining Framework in Drugs Cases. Thus, courts may overrule the objection of the prosecution when the objection has no valid basis, or is not supported by evidence, or if the objection solely tends to undermine the Court's plea bargaining framework, or that the objection is solely to the effect that it will weaken the drugs campaign of the government. To narrowly construe the trial court's discretion under Section 2, Rule 116 of the Rules of Court is to undermine the value of plea bargaining itself and render it an ineffective tool of rehabilitation and restorative justice.

Moreover, plea bargaining is a mechanism that becomes available to the accused only after the Information is filed. Well-settled is the rule in our jurisdiction that once the Information is filed in court, any disposition of the case rests upon the sound discretion of the court. Indeed, the Court has held:

> Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court[,] he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence.[96]

During the deliberations for this case, it was raised that the trial court cannot overrule the objection of the prosecution to the plea bargaining proposal since mutual consent is a condition *sine qua non* before the trial court may exercise its authority over a plea bargain. It was suggested that for the courts to overrule the prosecution's objection, especially if the objection is grounded on an Executive issuance or policy, would be an impermissible

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[96] *Crespo v. Mogul*, 235 Phil. 465, 476 (1987).

overreach into a matter supposedly within the sole prerogative of the Executive and thus, violative of the principle of separation of powers.[97]

However, it must be noted with import that the exclusive prerogative of the Executive begins and ends with matters involving purely prosecutorial discretion. Prosecutorial discretion pertains to who to prosecute, what case to prosecute, and how the case would be pursued based on the evidence available to the prosecution. The prosecution has the freedom and authority to determine whether to charge a person, what Information to file against them and how to prosecute the case filed before the courts. There is, however, an obvious limit to prosecutorial prerogatives as the prosecutor obviously has no control over how the court would decide the case. While a prosecutor may look at the evidence and determine the charge and that a person is probably guilty of the same, a judge may look at the same set of evidence and arrive at a different conclusion.

This dividing line between prosecutorial prerogatives and judicial discretion is why courts may overrule objections on plea bargaining on certain grounds. The prosecution's objection may be based on anything under the sun. If an objection is anchored on what is exclusively a prosecutorial prerogative, it would indeed be a violation of the separation of powers for a court to override the prosecutor's objection. If, however, the objection is based on a supposed "internal guideline" of the Executive that directly runs counter to a Court issuance promulgated within the exclusive domain of the Judiciary — such as the Plea Bargaining Framework — then it is not a violation, but rather a **mere assertion**, of the principle of separation of powers. In other words, as any motion submitted for the court's resolution, if the prosecution's basis for objection has no merit or runs afoul of the Constitutional prerogative exclusive to the court, then it is not unconstitutional for a court to assert by ruling that such objection is invalid.

It must be clarified that courts are not given the unbridled discretion to overrule any objection of the prosecution to a plea bargaining proposal. To be sure, the authority of the court over plea bargaining in drugs cases is circumscribed foremost by the Court-issued framework on the acceptable plea bargains and by the evidence and circumstances of each case. Thus, a court has no jurisdiction to overrule an objection of the prosecution if the same is grounded on evidence showing that the accused is not qualified therefor, or when the plea does not conform to the Court-issued rule or framework.

However, when a court overrules a prosecution's objection, which is solely grounded on an Executive issuance or policy that contradicts a Court-issued rule on plea bargaining, it is not an intrusion into the Executive's authority and discretion to prosecute crimes, but is simply a recognition of the Court's exclusive rule-making power as enshrined in the Constitution.

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[97] *See* Separate Concurring Opinion of Senior Associate Justice Marvic M.V.F. Leonen, pp. 4-5; and Concurring and Dissenting Opinion of Associate Justice Maria Filomena D. Singh, pp. 3-8.

It bears to emphasize that when the Court upholds its exclusive power to promulgate rules on plea bargaining, it only recognizes the role of the Judiciary as impartial tribunals, with the mandate of determining what is fair and reasonable under the circumstances, cognizant of the rights and interests of both the State and the accused. In contrast, the prosecutor's mandate is to champion the cause of the State and prosecute criminals to the full extent of the law, which may prevent it from fully seeing the middle ground in the plea bargaining process. This is the reason why it is ultimately the Court which has the power to promulgate the rules on plea bargaining. **This is the reason behind *Estipona.***

For if the courts were to simply concede to the prosecution's policy or issuance, even if the same subverts and negates Court-issued rules — then this effectively amounts to the Court giving undue deference to the prosecutorial arm, instead of upholding the rationale of the plea bargaining process as a middle ground between the prosecution and the accused. It also necessarily means that the Court is relinquishing its exclusive Constitutional authority and effectively becomes complicit to a violation of the constitutional principle of separation of powers.

Plea Bargaining in criminal cases and the principle of mutual consent

At this juncture, it is also crucial to clarify that the phrase "mutually satisfactory disposition of the case"[98] repeatedly used in jurisprudence in defining plea bargaining in criminal cases is not synonymous with the principle of mutuality or consensuality of contracts. The primordial considerations in plea bargaining are the State's mandate to prosecute crimes and the protection of the rights of the accused. Mutuality, in the perspective of plea bargaining, is merely descriptive of the convergence of the interest of the parties and should not be understood to prevent or restrict the exercise of the trial court's discretion in relation to the Court's rule-making power. It should not bar the trial court from overruling a blanket objection or an outright rejection of a proposal to plea bargain, on the ground only that it does not conform with internal rules or guidelines of the DOJ, without any consideration of the factors enumerated in the plea bargaining framework issued by the Court, if any. To permit such blanket objection or outright rejection undermines the authority of the Court to exercise its rule-making power.

Neither is plea bargaining, as a conceptually exceptional remedy, akin to a compromise agreement in civil cases, which indispensably requires the consent of the parties. In stark contrast to a compromise agreement in civil cases, where the parties' discretion as to the terms of their agreement is close

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[98] See *People v. Villarama, Jr.*, supra note 85; *People v. Reafor*, supra note 8; *Gonzales III v. Office of the President of the Phils.*, supra note 85.

to limitless, considerations in a plea bargaining agreement are finite. This is because, fundamentally, criminal liability is not subject to compromise. As such, the prosecution and the accused cannot agree on pleading guilty to a lesser offense if it is not necessarily included in the offense charged, or that plea bargaining is not allowed when evidence of guilt against the accused is strong or that the accused is a recidivist, habitual delinquent, etc.

Again, to emphasize, plea bargaining is a mechanism in criminal procedure geared towards achieving an efficient, speedy and inexpensive disposition of a case. It enables the prosecution and the defense to mitigate the offense charged in exchange of a plea of guilty that is enforceable only if approved by the court. Under this mechanism, the accused is permitted to plead guilty to a lesser offense that is equivalent to a judicial admission while the prosecution obtains a final judgment of conviction without proof. To ensure that the ends of plea bargaining are achieved, the trial court independently assesses the merits of the plea bargaining proposal of the accused. Therefore, the approval or denial of the plea bargaining, regardless of the mutual consent of the parties, is strictly within the sole power and discretion of the court.

Applying the foregoing principles to the case of Baldadera, the RTC should not have hastily approved his plea bargaining proposal. Instead, the RTC should have determined (1) whether the evidence of guilt is strong; and (2) whether Baldadera is a recidivist, habitual offender, is known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times. The presence of any of these circumstances would bar him from availing of the benefits of entering into a plea bargain with the State.

Similarly, in the case of Montierro, the RTC should have resolved the plea bargaining proposal by making an independent determination, based on the circumstances of the accused, whether he is qualified to avail of its benefits. The RTC should not have hastily rendered a guilty verdict based on the proposal to plea bargain without resolving the objection of the prosecution.

Given the foregoing, the Court deems it proper to remand the cases to the court of origin to afford the latter an opportunity to ascertain, based on the guidelines set forth herein, whether Baldadera and Montierro are qualified to avail of the benefits of plea bargaining.

Additionally, in A.M. No. 18-03-16-SC, it is provided that:

> In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependency test shall be required. If accused admits drug use, or denies it but is found positive after drug dependency test, he/she shall undergo treatment and rehabilitation for a period of not less than 6 months. Said period shall be credited to his/her

> penalty and the period of his/her after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/dependency, he/she will be released on time served, otherwise, he will serve his sentence in jail minus the counselling period at rehabilitation center. However, if accused applies for probation in offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Sec. 24 thereof, then the law on probation shall apply.[99]

Thus, the RTC is directed to order Baldadera and Montierro to undergo a drug dependency test as one of the requirements to avail themselves of the plea bargaining mechanism.

To summarize the foregoing discussion, the following guidelines shall be observed in plea bargaining in drugs cases:

1. Offers for plea bargaining must be initiated in writing by way of a formal written motion filed by the accused in court.

2. The lesser offense which the accused proposes to plead guilty to must necessarily be included in the offense charged.

3. Upon receipt of the proposal for plea bargaining that is compliant with the provisions of the Plea Bargaining Framework in Drugs Cases, the judge shall order that a drug dependency assessment be administered. If the accused admits drug use, or denies it but is found positive after a drug dependency test, then he/she shall undergo treatment and rehabilitation for a period of not less than six (6) months. Said period shall be credited to his/her penalty and the period of his/her after-care and follow-up program if the penalty is still unserved. If the accused is found negative for drug use/dependency, then he/she will be released on time served, otherwise, he/she will serve his/her sentence in jail minus the counselling period at rehabilitation center.

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.

    a. Though the prosecution and the defense may agree to enter into a plea bargain, it does not follow that the courts will automatically approve the proposal. Judges must still exercise sound

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[99] *Re: Adoption of Plea Bargaining Framework in Drug Cases*, A.M. No. 18-03-16-SC, June 4, 2019.

discretion in granting or denying plea bargaining, taking into account the relevant circumstances, including the character of the accused.

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:

   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. when the evidence of guilt is strong.

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.

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.

8. If the prosecution objects to the accused's plea bargaining proposal due to the circumstances enumerated in item no. 5, the trial court is mandated to hear the prosecution's objection and rule on the merits thereof. If the trial court finds the objection meritorious, it shall order the continuation of the criminal proceedings.

9. If an accused applies for probation in offenses punishable under RA No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Section 24 thereof, then the law on probation shall apply.

WHEREFORE, the Decision dated July 1, 2020 and the Resolution dated November 26, 2020 of the Court of Appeals in CA-G.R. SP No. 158032 and the Decision dated February 27, 2020 and Resolution dated October 27, 2020 of the Court of Appeals in CA-G.R. SP No. 158301 are **SET ASIDE**.

The respective cases of Cypher Baldadera *y* Pelagio and Erick Montierro *y* Ventocilla are **REMANDED** to the court of origin to determine:

(1) whether the evidence of guilt is strong; and (2) whether Baldadera and Montierro are recidivists, habitual offenders, known in the community as drug addicts and troublemakers, have undergone rehabilitation but had a relapse, or have been charged many times.

Furthermore, Baldadera and Montierro are **ORDERED** to submit to a drug dependency test pursuant to A.M. No. 18-03-16-SC.

The letter dated July 5, 2021 of the Philippine Judges Association and the memorandum dated October 8, 2021 from the Court Administrator are hereby **NOTED**.

Let copies of this Decision be furnished the Office of the Solicitor General, the Office of the Secretary of Justice, the Office of the Prosecutor General, the Public Attorney's Office, the Integrated Bar of the Philippines and the Office of the Court Administrator for their guidance and information.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

I concur in the result.
See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

See Concurrence & Dissent

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

See separate concurring and dissenting opinion.

MARIA FILOMENA D. SINGH
Associate Justice

See Concurring and Dissenting Opinion

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 cases were assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

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