EN BANC

G.R. No. 254564 (*People v. Montierro*);

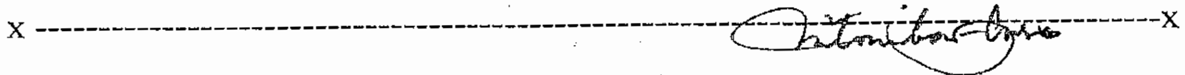
G.R. No. 254974 (*Baldadera v. People*);

A.M. No. 21-07-16-SC (*Re: Letter of the Philippine Judges Association Expressing its Concern Over the Ramifications of the Decisions in G.R. No. 247575 and G.R. No. 250295*)

A.M. No. 18-03-16-SC (*Re: Letter Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*)

Promulgated:

July 26, 2022



CONCURRENCE AND DISSENT

LAZARO-JAVIER, *J*:

The *Majority* laid down the following Bench-and-Bar practice direction on plea bargaining:

> 1. Offers for plea bargaining must be initiated in writing by way of a formal written motion filed by the accused in court.
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> 2. The lesser offense which the accused proposes to plead guilty to must necessarily be included in the offense charged.
>
> 3. In particular application to cases involving dangerous drugs, 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.
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> 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 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 with 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 Department of Justice (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 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.

The *Majority* held that in these cases, **the prosecution was deemed to have withdrawn its objection to the plea bargain** when the DOJ itself aligned its plea bargaining policy with the Court's framework. The *Majority* nonetheless ordered the **remand of the cases** for the trial court **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.

Let me start with the salient points of the **revised** practice direction on plea bargaining, as clarified by how the present cases were disposed of:

1. In all instances of plea bargaining (*i.e.*, not just in criminal cases involving drugs), the trial court has the duty to determine the propriety of the plea bargain. The dispositive factors are –

    - **the prosecution's evidence** against the accused is **strong**, ***and*** (not ***or*** as I will explain below)
    - the accused's **character** or **status** as a *recidivist, habitual offender, relapsee*, or *repeat criminal indictee*, or the latter's **notoriety** *as a drug addict* **and** *troublemaker*, ***and***
    - in **drugs cases**, the plea bargain **must conform with** the Court's *Plea Bargaining Framework.*

    If both the **first** and the **second** factors are present, even if the **third** factor is complied with, the trial court **shall reject** the plea bargain.

    If the **third** factor is **not** complied with, **regardless** of the presence or absence of either or both the **first** and the **second** factors, the trial court **shall reject** the plea bargain.

2. In deciding whether to **accept** or **reject** the plea bargain, the trial court may consider other factors, which are "the relevant circumstances, including the character of the accused."

3. The prosecution may either consent or object to the accused's plea bargain.

    a. Based on the **dispositive portion** of the *ponencia,* if the prosecution **consents**, or passively **does not object**, or **withdraws** its objection, or if **its objection is improper**, the trial court must still hear the prosecution on the presence or absence of the **determinative factors**. If these factors are present, the trial court shall reject the plea bargain and continue with the trial.

    b. Based on the *ponencia*'s practice direction in No. 8 in relation to No. 5, if the prosecution objects, and the objection is based on the **determinative factors**, the trial court must then hear the prosecution on its objections. If these factors are present, the trial court shall reject the plea bargain and continue with the trial.

4. The range of objections the prosecution can offer is severely **limited**. It **cannot object** "under any internal rules or guidelines of the DOJ," if the accused is plea bargaining "in accordance with the plea bargaining framework issued by the Court."

I most respectfully **disagree**.

<u>First</u>. The practice direction on plea bargaining is **purposively** and **openly** to **diminish** or at least **modify** the **prosecutorial discretion** of the Executive Branch represented by the DOJ in the criminal justice system generally and the plea bargaining process more specifically. With utmost respect, this practice direction is **unconstitutional**.

This is **because** the Court's **rule-making** power is **proscribed against promulgating rules** that **diminish**, increase, or **modify substantive rights**. The practice direction on plea bargaining is an exercise of the Court's rule-making power. But it **diminishes** or at least **modifies** a **substantive right** of the DOJ to exercise **prosecutorial discretion**. Hence, on this **principled** ground, I have to **disagree** with the *Majority's* practice direction. It is ***ultra vires***.

Prosecutorial discretion refers to the **freedom and power** of choice and action exercised by the DOJ Secretary – and the Secretary's delegated agent – in matters relating to the prosecution of criminal offenses which fall within the DOJ's authority. This discretion encompasses a **wide range of activities** including but not limited to the choice of charge, the decision to proceed (which includes plea bargaining), and the withdrawal or dismissal of charges.

Prosecutorial discretion is **inherent** to the office of the DOJ and flows from the **sovereign's *<u>constitutional right</u>*** to prosecute crimes.[1] This freedom and power have also been codified in Title III, Book IV of the *Administrative Code of 1987*, as amended.[2]

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[1] *People v. Ocden*, 665 Phil. 268 (2011), quoting *People v. Romero*, 296 Phil. 646 (1993): "It is relevant to note that "the right of prosecution and punishment for a crime is one of the attributes that by a natural law belongs to the sovereign power instinctly charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights." This cardinal principle which states that to the State belongs the power to prosecute and punish crimes should not be overlooked since a criminal offense is an outrage to the sovereign State."

[2] SECTION 1. Declaration of Policy. — It is the declared policy of the State to provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system xxxx.
SECTION 2. Mandate. — The Department shall carry out the policy declared in the preceding section.
SECTION 3. Powers and Functions. — To accomplish its mandate, the Department shall have the following powers and functions: (1) Act as principal law agency of the government and as legal counsel and representative thereof, whenever so required; (2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system; xxxx. (7) Provide legal services to the

When exercising this discretion in prosecutorial matters, the prosecutors occupy a distinct position because they must not only consider the **situation of the individual in question,** or **individualized justice**, but also the **demands of the public interest.**[3] Hence, in this regard, prosecutors are admonished that –

> [t] he primary duty of a lawyer engaged in public prosecution is **not to convict but to see that justice is done.** The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.[4]

At the same time, prosecutorial discretion is guided by such other factors as **flexibility** and **scarce resource maximization**, and the push and pull between prioritizing **expediency** including **crime prevention through restorative justice** and **shock-and-awe approaches** and **docket management** and the multi-faceted goals of **fairness and justice.** In fine, the prosecutor's function is **so much more a matter of public duty** than one in civil life, as there can be none charged with greater personal responsibility than this role.

As will be explained below, the *Majority's* practice direction on plea bargaining **severely curtails** the **right of the prosecution to exercise its discretion** in the **prosecution of crimes.** Thus, the practice direction **violates the separation of powers** between the Judiciary and the Executive.

As has been explained elsewhere,[5] where discretion is granted to make determinations in multiple specific cases, then the exercise of that discretion must be determined in accordance with the specifics of each case. The fact that the *Constitution* and Congress have granted this power means that they wanted the **discretion to be exercised on a case-by-case basis.** The **underlying purpose** in granting a decision-maker **discretion** is to guarantee flexibility and responsiveness in decision-making. The decision-maker will err if, rather than considering the decision on a case-by-case basis, **it simply applies or follows earlier developed procedures or policy without considering whether that policy is appropriate to the particular case.**

More,[6] the blind following of guidelines or frameworks is not the only way decision-makers can fetter their discretion. Discretion is fettered whenever decision-makers decide a matter (which is to be decided on the basis

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national government and its functionaries, including government-owned or controlled corporations and their subsidiaries; and (8) Perform such other functions as may be provided by law.

3 *Abela v. Golez*, 216 Phil. 12 (1984).

4 Rule 6.01, Code of Professional Responsibility.

5 *Vale Newfoundland & Labrador Limited v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers, Local 9508)*, 2011 NLLRB 1 (CanLII).

6 Id.

of discretion) on the basis that **some pre-existing policy or view, rather than on the basis of the merits** of the case. All decision-makers may take into account guidelines, general policies, and rules, or try to decide similar cases in a like manner. But a decision-maker cannot fetter its discretion in such a way that it mechanically or blindly makes the determination without analyzing the particulars of the case and the relevant criteria. For again, discretion must be exercised on a case-by-case basis.

Thus,[7] the decision-maker may **not adopt inflexible policies**, as the existence of **discretion inherently means that there can be no rule dictating a specific result in each case**, and the flexibility and judgment that are an integral part of the discretion may be lost. Discretion, by its nature, can lead to different results in different cases, and that everyone may expect an individual and independent assessment of the case.

Second. No. 1 of the *Majority's* practice direction requires the accused to start plea bargaining with a **written motion** to the **trial court**. The practice direction though **does not clarify** the effect of the motion, especially when the plea bargain is **denied**.

Does the motion amount to an offer of compromise that under Section 28 of Rule 130 of the *2019 Amendments* is an **implied admission of guilt**? Or is the motion (though addressed to the prosecution *and* the trial court) part of the **without prejudice discussions** between the prosecution and the defense?

If the latter, I see **no** reason for requiring as an **originating** process **only** a motion filed with the trial court. We ought **to allow as well** the plea bargaining to take place between the prosecution and the defense **even without a motion having been filed first**, and later, when the plea bargain is finalized, only then should it be presented to the trial court for approval or rejection.

I have **two reasons** for this respectful opinion –

- As an impartial tribunal, the trial court **must not be involved during the negotiations** between the defense and the prosecution, and these **negotiations** should be understood to be **without prejudice** and **confidential**. This is to protect the trial court from the **substantial risk of losing its impartiality** by **hearing** information about the case and worse **taking part in the plea bargaining** between the prosecution and the defense.

- It is also to **encourage** a **free flowing back-and-forth** between the prosecution and the defense, that their communications should be kept

[7] Id.

confidential and **privileged.** This consideration is the same as those for requiring court-annexed mediations to be confidential and privileged.

Indeed, while the trial court and the Court may approve or reject a plea bargain, they **cannot take part**, directly or indirectly, in the **plea negotiations**. This is **what is happening** with the *Majority's* practice direction on plea bargaining. As has been explained elsewhere:[8]

> The California Supreme Court has written that "[t]he **process of plea bargaining which has received statutory and judicial authorization ... contemplates an agreement negotiated by the People and the defendant** and **approved by the court**." (People v. *Orin* (1975) 13 Cal.3d 937, 942 [120 Cal.Rptr. 65, 533 P.2d 193]; see also *In re Lewallen* (1979) 23 Cal.3d 274, 280-281 [152 Cal.Rptr. 528, 590 P.2d 383, 100 A.L.R.3d 823].) Another court explained: "**[Because] experience suggests that [judicial participation in plea bargaining] risks more, in terms of unintentional coercion of defendants, than it gains in promoting understanding and voluntary pleas** ... most authorities recommend that it be kept to a minimum ...." (People v. *Williams* (1969) 269 Cal.App.2d 879, 884 [75 Cal.Rptr. 348].)
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> The American Bar Association, in its Standards for Criminal Justice (ABA Standards), points out that "**the Federal Rules of Criminal Procedure and numerous statutes and rules forbid the involvement of judges in plea discussions.**" (3 ABA Standards, std. 14-3.3(c)-(f) (2d ed. 1980) p. 14.84, fns. omitted.) The ABA Standards further explain that **the trial court plays an essential role in the plea bargaining process of ensuring that the process is fair and that the plea is voluntary.** A **court's participation in the bargaining**, or **maintenance of a fixed policy regarding any aspect of plea agreements**, **could compromise this essential role.** Also, **coercion is more likely to occur when a defendant is negotiating with the judge who is presiding over** his or her case rather than the prosecutor, and equality of bargaining power between the prosecution and defense may be upset when the judge enters into the bargaining process. (ABA Standards, *op. cit. supra.*)
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> As the appellate court in *Morris* concluded: "While trial **courts are encouraged to fashion procedural innovations, consistent with due process requirements**, designed to effectively and fairly expedite the processing of criminal cases, **we cannot condone unconventional techniques which clearly** infringe upon a defendant's basic rights or otherwise **fetter prosecutorial discretion** as are here manifested." (97 Cal.App.3d 358, 364.) The Supreme Court found this reasoning "manifestly correct" in *Cruz*. (44 Cal.3d 1247, 1253-1254.)
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> *CA* **(1b)** We conclude that the return provision was not a valid part of appellant's plea bargain. The trial court, while no doubt well-intentioned, infringed on appellant's due process rights by maintaining and implementing its return provision policy. In light of our conclusion, we do not address the other issue raised by appellant.

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[8] *People v. Jensen*, 4 Cal App 4th 978, 979, 6 Cal Rptr 2d 201, 201 (Cal App 1st Dist March 18, 1992).

I therefore disagree with the *Majority's* practice direction for yet another reason. It **violates the due process clause, specifically the right of the accused to an impartial judge.**

Third. No. 1 and the rest of the *Majority's* practice direction **may have overlooked to require** the trial court to conduct a **plea inquiry** as part of the plea bargaining. This plea inquiry is **necessary** to protect an accused from entering into a plea bargain **not because** they are **truly guilty** but **out of undue influence** over them to **accommodate** the **convenience** of the trial court, the prosecutor, and the defense counsel. Also, since the plea bargain is a **waiver** of the process constitutionally guaranteed to an accused, this **waiver** must be based on truly **free** and **informed consent.** The **plea inquiry** fills in this need.

The accused must go through the plea inquiry before they plead guilty. The purpose of the plea inquiry is **to make sure they understand**:

- what it means to plead guilty;
- the accused's rights if they plead **not** guilty; and
- the accused cannot plead guilty if the judge is **not** satisfied that they have honestly answered the plea inquiry.

The defense lawyer will work through the plea inquiry with the accused in private **and** in open court before the judge. The accused will be asked by the defense counsel whether:

- anyone has pressured or forced the accused to plead guilty;
- the accused agree that they committed the crime they are pleading guilty to;
- the accused understand that by pleading guilty they are giving up their right to a trial and to have the prosecution prove the charges against them beyond a reasonable doubt;
- the accused understand that they will get a criminal record;
- the accused understand that they will be sentenced;

- the accused understand that the judge can reject the plea bargain; and,

- the accused understand that the sentence must conform with the Court's plea bargaining framework, if any, and that it could happen right away or at a later date.

Pleading guilty is a serious decision that has lifelong consequences. An accused **should not plead guilty** on plea bargaining unless they can answer the plea inquiry honestly and to the satisfaction of the defense lawyer and the trial court.

If the answers of the accused show that they do not understand the consequences of pleading guilty, or that someone has pressured them, **even if** for some noble reason as the trial court's **docket management**, the trial court should **not accept** a guilty plea from them. **Instead**, the trial court must enter a plea of not guilty on their behalf. If this happens, the accused will have a trial and will only be sentenced if they are found guilty beyond reasonable doubt.

Fourth. As regards No. 2, I **agree** that the Court has the **final say** on whether the lesser offense in the plea bargain is **necessarily included** in the offense charged. This is a **question of law**. Hence, the Court may lay down a **plea bargaining framework** that **pre-identifies** the offenses which are necessarily included in the offense charged.

Fifth. No. 3 requires the accused to undergo a drug dependency assessment **the moment** they **propose** (or move for) plea bargaining. In my humble view, this requirement may no longer be necessary because –

- Drug test (or better, drug dependency assessment) **should actually be done** to "[a]ll **persons charged** before the prosecutor's office with a criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day...."

- The drug dependency assessment **impacts** on the **service of sentence** by the accused, **regardless** of whether the trial court rejects or accepts the plea bargain. Hence, it **may not be necessary** to require it early on in the process, and thus, delay the disposition of the criminal case.

- No data are available on the **waiting period** and the **processual period** for a drug dependency assessment. Hence, again, to

require it **early on in** and as a **condition precedent to** the **plea bargaining** may just delay the disposition of the criminal case.

Sixth. Nos. 4, 5, and 6 **only speak** to the **trial court's** ***discretion to reject*** a plea bargain *and* the **trial court's** ***duty to reject*** a plea bargain. They are **silent however** as to whether the **trial court** has the **power to** ***impose*** a plea bargain. This **silence** leads to an **ambiguity** that is better off **clarified** at this time, if we truly want the Bench and the Bar to be **correctly guided.**

Seventh. In No. 5, the **first prong** of the determinative factors – *i.e.*, the accused's status and notoriety, I respectfully opine that it should **not** be treated as if they were **bright-line rules**. Rather, they should be meant to be **fine lines** or starting points for the balancing with other factors and inquiries. To illustrate, an accused who is notorious to be a troublemaker could be so **because of drug addiction**. Then, perhaps, until rehabilitation has proven to be utterly ineffective, this accused should not be denied the opportunity to plea bargain. A **repeating indictee's** circumstances, for instance, could be indicative of police profiling. The point that I am making is that this **first prong** is **not** a **reasonable** ***per se*** **measure** of the accused's worth for plea bargaining purposes.

On this score, I respectfully submit that the *Majority* should have constituted the **first prong** as **fine line**, not bright-line tests for plea bargaining availability. To do this, the *Majority's* practice direction should open **categorically** the **first prong** to the trial court's consideration of all "the relevant circumstances, including the character of the accused" under No. 4 (a) of the practice direction.

Eighth. In No. 5, the **second prong** of the determinative factors – *i.e.*, the prosecution's evidence is strong – should be **clarified** as to what is meant by "strong." Is the standard the **same as the standard in bail applications**? If the practice direction is meant to provide workable guidelines to the Bench and Bar, this clarification should have been included under No. 5.

Ninth. With due respect, it is my humble view that No. 5 **unconstitutionally diminishes** the **substantive** right of the prosecution to **prosecutorial discretion**. There are **legitimate public policy** and **public interest reasons** for the prosecution to **plea bargain** though **both** the determinative factors are present, that is, the prosecution's evidence is **strong** and the accused belongs to the **excluded class**.

For instance, the DOJ may want to **obtain crucial information** about some crime or crimes, and the **way to do this** is through the **plea bargain.** The Court **should not limit** the discretion of the prosecution on how to implement its law enforcement and crime prevention duties, especially in using plea bargaining as a tool to this end.

<u>Tenth.</u> No. 6 might also **unconstitutionally diminish** the **substantive** right of the prosecution to **prosecutorial discretion**. While I **admit** that the Court **has the power** to pre-identify the crimes necessarily included in the crimes charged and construct a plea bargaining framework for this purpose, the plea bargaining framework **should not restrict** the prosecution from determining for itself and submitting to the Court its view that the crime for plea bargaining is **also necessarily included** in the crime charged.

If indeed the plea bargaining crime is **necessarily included** (like possession in a charge of sale), it is **not reason** for the trial court to reject the plea bargain solely because it does **not** conform with the Court's plea bargaining framework. Stated differently, the latter should **only be considered** a **starting point** but not the end-all and be-all of the crimes necessarily included in a charge, **if this is truly not the case**.

<u>Eleventh.</u> No. 7 talks about the **power** of the trial court to **overrule** the prosecution's objections to a plea bargain offer. I beg to **disagree** because –

- It is **silent** on whether the trial court **could impose** a plea bargain **as a result of its overruling** the prosecution's objections.

- And to repeat, it **unconstitutionally diminishes** the **substantive** right of the prosecution to **prosecutorial discretion**. For –

  - It is **not fair to allow the trial court** the discretion to consider all "the relevant circumstances, including the character of the accused" under No. 4(a) of the practice direction, **yet deny the prosecution** this same amount of latitude in formulating their objections to a proposed plea bargain.

  - The trial court is **empowered to overrule the prosecution's objections** based on its internal rules, guidelines or policies, when the accused's plea bargain is already in accordance with the Court's plea bargaining framework, if any.

This reference to *internal rules*, *guidelines*, or *policies* is so **broad** that **they could very well inhibit *<u>legitimate</u>* prosecutorial discretion**. Notably, the Court's plea bargaining framework **does not justify depriving** the prosecution of its **right to conduct the prosecution of criminal cases, including plea bargaining, in the manner it sees fit.**

What **legitimate objections** may the prosecution raise against a plea bargain **other than** those already mentioned in No. 5?

There are situations where the evidence of guilt is **not strong** because of **technical reasons**. For example, in *People v. Musor*,[9] the Court required the presence of the Section 21 witnesses **at the time of the actual apprehension** of the drug pushers. This meant **being present** at the time of the **buy-bust operation** itself, no matter how impractical or absurd this requirement might be.

The DOJ should **not** be compelled to sit idly by and not object to the plea bargain when it **firmly believes** that this rule in *People v. Musor* should be questioned or should not be applied at all.

The Court's plea bargaining framework should only be that, a **framework**, a **skeleton**, a **shell**, a **platform**. But the **details** that go into the **framework**, from the perspective of the prosecution, is for the **prosecution to decide**. We invite the prosecutors inside our **framework**, **skeleton**, **shell**, or **platform**, but we do **not** tell them what to say after they have come in.

With due respect, what the *Majority* envisions is **not a conversation, not a dialogue, not a court proceeding even where litigants are allowed to voice their reasons**. There are **no exchanges** of ideas, *when plea bargaining is about that.*

By **refusing** to agree to the plea bargain which coincides with the Court's plea bargaining framework, the prosecution is **not undermining** the Court's rule-making power. In the first place, the prosecution has the **inherent right** to agree or not to agree to a plea bargain, consistent with its prosecutorial discretion.

This discretion is **not of course unfettered**. There is that **overarching restriction** of ***grave abuse of discretion*** or even ***abuse of process***. More, even the Court has innumerably held that generally **we will not restrain a criminal prosecution**. So, I **cannot** reconcile this claim of ***undermining*** the Court's rule-making power with the fact that the prosecution simply begged to differ and refused the plea bargain.

The *Majority* should have clarified that No. 5 of the practice direction refers to situations where the DOJ itself has set down *internal rules*, *guidelines*

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[9] G.R. No. 231843, November 7, 2018: "The presence of the three witnesses must be secured not only during the inventory but more importantly *at the time of the warrantless arrest*.... The practice of police operatives of not bringing to the *intended* place of arrest the three witnesses.... To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with *at the time of the warrantless arrest*.... It is important to point out that the buy-bust team, most especially, PO2 Bautista, as a former PDEA officer, knew that *the presence of the three witnesses is required at the time of the warrantless arrest*."

or *policies* that amount to a plea bargaining framework that differs from the Court's framework. **But what of it?** Unless it has been shown that the DOJ's own set of plea bargaining rules is an **abuse of process** or was enacted with **grave abuse of discretion**, for reasons **other than that it is not similar to** or **the same** as the Court's framework, the Court **has to respect** its prosecutorial discretion – just as we would expect the DOJ and its prosecutors to respect our discretion.

And if the DOJ prosecutors were to object to the plea bargain simply by referring to these *internal rules*, *guidelines* or *policies*, the objection would actually be the **short-hand** or **banner** of the **underlying policy considerations** that the policy-makers at the DOJ head office have factored in in writing and imposing the *internal plea bargaining rules*, *guidelines* or *policies*. In all these instances, from the **formulation** of *internal rules*, *guidelines* or *policies* to its **invocation** by the prosecutors, what is at work is the DOJ's inherent right of prosecutorial discretion.

To **summarize**, the trial court should **only reject a plea bargain** or the **prosecutor's objections to the plea bargain**, only if the plea bargain or the objections amount to **grave abuse of discretion** or an **abuse of process**.

An **example** of an **improper exercise** of prosecutorial discretion in plea bargaining is when the discretion amounts to **prosecutorial vindictiveness**. This occurs where the accused is being **punished for the exercise of a protected right.**[10]

<u>Twelfth.</u> In sum, the following are my recommendations on plea bargaining –

- In No. 1, by recasting the exclusive requirement of a written motion to the trial court as an originating process for the plea bargaining, and in its place, to recognize direct negotiations between the prosecution and the defense as a proper way to start the plea bargaining.

- Still in No. 1, by ensuring that plea bargaining are confidential, privileged and without prejudice.

- By requiring a plea inquiry.

- In No. 3, by not requiring a drug dependency assessment as a condition precedent to start the plea bargaining.

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[10] *People v. Jensen*, 4 Cal App 4th 978, 979, 6 Cal Rptr 2d 201, 201 (Cal App 1st Dist March 18, 1992).

- By clarifying whether the trial court has the power to impose a plea bargain despite the opposition of the prosecution.
- In No. 5, by clarifying the standard for determining whether the evidence of the prosecution is strong.
- Further in No. 5, by recasting the first prong of the determinative factors to consider the over-all conduct of the accused and the context of the accused's conflicts with the law.
- By inserting in the practice direction this *caveat*: *Prosecutors must still exercise sound discretion in agreeing to or rejecting the plea bargain, taking into account the relevant circumstances, including the character of the accused and the externalities of the alleged criminal incident.*
- By inserting in the practice direction this *caveat*: *If the prosecution objects to the accused's plea bargaining proposal due to the circumstances enumerated in item no. 5 and/or item no. 6, 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. Otherwise, only if the objection is clearly and convincingly unmeritorious, the trial court shall approve the plea bargain over the objection of the prosecution.*
- By inserting in the practice direction this *caveat*: *The trial court should **only reject a plea bargain** or the **prosecutor's objections to the plea bargain**, if the plea bargain or the objections amount to **grave abuse of discretion** or an **abuse of process**.*

My overall thrust is simple – to **respect the prosecutorial discretion** of the DOJ and its prosecutors. The rule-making power of the Court did **not silence** this freedom and power of choice and action of the prosecution. Their respective powers have **co-existed peacefully since time immemorial**. The DOJ has its work, we have ours. One need not submit to the other. There is no contest between the courts and the DOJ in the plea bargaining process. **There should just be, unity.**

Postscripts from recent past

The Court's Plea Bargaining Framework was one of the reactions to the deluge of criminal cases involving drugs in our trial courts. Dockets of drug cases were soaring. We were constrained to include *every court* to address this deluge. In A.M. No. 16-07-06-SC (2016), the Court observed and did its best to resolve this concern:

> WHEREAS, in compliance with Section 90, Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended, the Supreme Court designated 65 "special courts from among the existing Regional Trial Courts (RTCs) in each judicial region to exclusively try and hear cases involving violations of this act";
>
> WHEREAS, there are also 529 RTCs in single and multiple-sala stations which likewise hear and decide drugs cases, in addition to 121 RTCs specially-designated as Family Courts having exclusive jurisdiction to hear and decide drugs cases against minors pursuant to Republic Act No. 8369;
>
> WHEREAS, consequently, at present, there are already 715 RTCs authorized to hear and decide drugs cases;
>
> **WHEREAS, because the volume of drugs cases remains high and the influx of new drugs cases is steadily rising, there is an urgency to authorize more courts to hear and decide drugs cases considering the already heavy dockets of specially-designated drugs courts and other RTCs handling drugs cases;**
>
> WHEREAS, with 715 RTCs out of the 955 RTCs already handling drugs cases, the remaining 240 other RTCs may be mobilized and directed to also hear, try and decide all newly-filed drugs cases to help decongest the dockets of specially-designated drugs courts and expedite the resolution of drugs cases.

Clearly, our framework was dictated by multifarious concerns of expediency, judicial economy, fairness, and efficient case management. It was a **unilateral** response from us to resolve a near-crisis situation. With this context, I sincerely believe we have to go slow in making this framework the benchmark as the DOJ's prosecutorial discretion in plea bargaining may be diminished. It does not provide the apt context for regulating this freedom and power of the DOJ.

ACCORDINGLY, I vote to modify the *Majority's* practice direction on plea bargaining so as to respect the prosecutorial discretion of the DOJ and its prosecutors.

AMY C. LAZARO-JAVIER
Associate Justice

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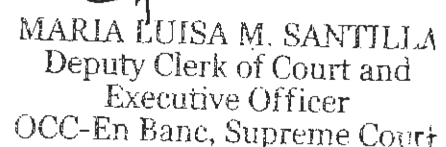

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