



SUPREME COURT OF THE PHILIPPINES
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**Republic of the Philippines
Supreme Court
Manila**

EN BANC

**OFFICE OF THE COURT
ADMINISTRATOR,**
Complainant,

A.M. No. P-13-3124
[Formerly OCA IPI No. 07-2482-P]

Present:

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

- versus -

ATTY. JERRY R. TOLEDO,
then Branch Clerk of Court [now
Clerk of Court V] and **MENCHIE
BARCELONA,** Clerk III, both of
the Regional Trial Court, Branch
259, Parañaque City,
Respondents.

Promulgated:

February 28, 2023

X

Calombas - Arend

RESOLUTION

GESMUNDO, C.J.:

Before the Court is a Manifestation and Motion for Reconsideration *Ad Cautelam*¹ filed by respondent Atty. Jerry R. Toledo (*Atty. Toledo*), seeking

* No part.

¹ *Rollo*, pp. 1118-1136.

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reconsideration of the Court's *Per Curiam* Decision² dated February 4, 2020, finding him and his co-respondent, Menchie Barcelona (*Barcelona*) guilty of Gross Neglect of Duty, and imposing upon them the penalty of dismissal from the service, among others. The dispositive portion of the Decision reads:

WHEREFORE, the Court finds respondents, Atty. Jerry R. Toledo, then Branch Clerk of Court [now Clerk of Court V] and Menchie A. Barcelona, Clerk III, both of the Regional Trial Court, Branch 259, Parañaque City, **GUILTY** of Gross Neglect of Duty and are hereby **DISMISSED** from the service. Accordingly, their respective civil service eligibility are **CANCELLED**, and their retirement and other benefits, except accrued leave credits, are hereby **FORFEITED**. Likewise, they are **PERPETUALLY DISQUALIFIED** from reemployment in any government agency or instrumentality, including government-owned and -controlled corporation or government financial institution.

SO ORDERED.³

To recall, the facts material to this case transpired when Atty. Toledo was the Branch Clerk of Court; while Barcelona was Clerk III of Branch 259, Regional Trial Court, Parañaque City (*Branch 259*). Barcelona was the evidence custodian, who kept evidence submitted to the trial court in a steel cabinet; while Atty. Toledo, as branch clerk of court, was the immediate supervisor of Barcelona.⁴

In November 2003, it was found out that 960.20 grams of *shabu* presented as evidence in Criminal Case No. 01-1229⁵ – a case for violation of Section 16, Article III of Republic Act (*R.A.*) No. 6425 – was missing from Branch 259's steel cabinet. Further investigation revealed that 293.92 grams of *shabu* – evidence in Criminal Case No. 03-0408 – was also missing from the steel cabinet where the evidence were kept. The disappearance of the subject evidence occurred while Barcelona was the evidence custodian; and while Atty. Toledo was the branch clerk of court.⁶

Eventually, an administrative case was filed against Atty. Toledo and Barcelona (collectively, *respondents*). After investigation, the Office of the Court Administrator (*OCA*) found that respondents should be held administratively guilty of simple neglect of duty. In line with this, the *OCA* recommended that Atty. Toledo be suspended for two months and one day


² Id. at 1006-1017.

³ Id. at 1016.

⁴ Id. at 1006-1007.

⁵ Also referred to as Crim. Case No. 01-01229 in some parts of the *rollo* (see *rollo*, p. 60).

⁶ *Rollo*, p. 1007.



without pay, while Barcelona be meted the penalty of one month and one day suspension without pay.⁷

Later, the Court issued its February 4, 2020 Decision,⁸ finding respondents guilty of the graver offense of Gross Neglect of Duty and imposing the ultimate penalty of dismissal from the service against them.⁹

Accordingly, Atty. Toledo filed his first Motion for Reconsideration (of the Decision dated February 4, 2020)¹⁰ and Barcelona filed a Motion for Reconsideration.¹¹

In a Resolution¹² dated December 1, 2020, the Court resolved to refer the motions for reconsideration to the OCA for evaluation, report, and recommendation.

In its Memorandum¹³ dated January 18, 2021, the OCA recommended that the motions for reconsideration be denied for lack of merit. It opined that the infractions committed by respondents may be considered simple neglect of duty only under ordinary circumstances. However, the OCA pointed out that the Court correctly adjudged respondents guilty of Gross Neglect of Duty given the nature and the volume of the missing evidence. It added that because of the incident, not only the criminal cases below were compromised, but the whole image of the Judiciary was tarnished as well. Finally, it claimed that no amount of mitigating circumstances can be appreciated in favor of respondents considering that more than one kilogram of *shabu* went missing under their watch.¹⁴

Following the said recommendation, the Court issued a Resolution¹⁵ dated February 16, 2021, which denied with finality the twin motions filed by respondents.

Despite the denial of his first motion for reconsideration, Toledo subsequently filed a Manifestation and Motion for Reconsideration *Ad*

⁷ Id. at 1009-1010.

⁸ Id. at 1006-1017.

⁹ Id. at 1016.

¹⁰ Id. at 1043-1056.

¹¹ Id. at 1024-1034.

¹² Id. at 1107.

¹³ Id. at 1109-1115.

¹⁴ Id. at 1114-1115.

¹⁵ Id. at 1116-1117.

Cautelam assailing the February 4, 2020 Decision of the Court, essentially raising the following issues:

I.

WHETHER ATTY. TOLEDO COMMITTED GROSS NEGLECT OF DUTY UNDER THE CIRCUMSTANCES OF THIS CASE.

II.

WHETHER THE PENALTY OF DISMISSAL FROM SERVICE SHOULD BE IMPOSED AGAINST ATTY. TOLEDO FOR GROSS NEGLIGENCE OF DUTY.

Atty. Toledo claims that he seasonably filed a motion for reconsideration against the February 4, 2020 Decision. However, he was already made to vacate his office as Clerk of Court V and *Ex-Officio* Sheriff of the Office of the Clerk of Court. His former assistant clerk of court presently occupies his vacated position. Nevertheless, he still believes in the merit of his defense, and thus, he exhorts the Court to review his case once more.¹⁶

According to Atty. Toledo, he should not be declared guilty of Gross Neglect of Duty because there was neither a deliberate nor reckless failure on his part to discharge the functions of his position. What is more, he could not have prevented the pilferage, regardless of his assiduous performance of his duties.¹⁷

He also argues that the lapses of Barcelona to immediately place the subject specimens inside the steel cabinet and their subsequent disappearance should not be attributed to his alleged failure to supervise the handling of physical evidence. He underscored that it is not humanly possible for him to see all the actions or inactions of his subordinates in their regular course of duties.¹⁸

Finally, Atty. Toledo averred that, even assuming that he is guilty of the offense of Gross Neglect of Duty, the extreme penalty of dismissal is not commensurate to the infraction he committed. He pleads that the Court

¹⁶ Id. at 1119.

¹⁷ Id. at 126-127.

¹⁸ Id. at 127.

appreciate the following mitigating circumstances in his favor: 1) his 24 long years of service in the Judiciary; 2) his employment record; and 3) his work ethics and dedication.¹⁹

The Court's Ruling

Preliminarily, it must be emphasized that the Court already issued a Resolution²⁰ dated February 16, 2021, denying Atty. Toledo's first motion for reconsideration. Necessarily, the Manifestation and Motion for Reconsideration *Ad Cautelam* filed by Atty. Toledo would be considered as a second motion for reconsideration assailing the February 4, 2020 Decision of the Court.

According to Sec. 3, Rule 15 of the Internal Rules of the Supreme Court (*Internal Rules*), the Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irreparable injury or damage to the parties.²¹

A second motion for reconsideration, albeit prohibited, may be entertained in the higher interest of justice, such as when the assailed decision is not only legally erroneous, but also patently unjust and potentially capable of causing unwarranted and irreparable injury or damage to the moving party.²²

In a catena of cases, the Court has entertained and granted second motions for reconsideration "in the higher interest of substantial justice," as allowed under the Internal Rules when the assailed decision is "legally erroneous," "patently unjust," and "potentially capable of causing unwarranted and irreparable injury or damage to the parties."²³ In *Tirazona v. Philippine EDS Techno-Service, Inc.*,²⁴ the Court likewise explained that a second motion for reconsideration may be allowed in instances of "extraordinarily persuasive reasons and only after an express leave shall have first been obtained."²⁵ In *Apo Fruits Corporation v. Land Bank of the*

¹⁹ Id. at 1133-1134.

²⁰ Id. at 1116-1117.

²¹ Internal Rules of the Supreme Court, Rule 15, Sec. 3.

²² *Fortune Life Insurance Co., Inc. v. Commission on Audit*, 821 Phil. 159, 171 (2017).

²³ *McBurnie v. Ganzon*, 719 Phil. 680, 701 (2013).

²⁴ 596 Phil. 683 (2009).

²⁵ Id. at 687.

Philippines,²⁶ the Court allowed a second motion for reconsideration as the issue involved therein was a matter of public interest, as it pertained to the proper application of a basic constitutionally-guaranteed right in the government's implementation of its agrarian reform program. In *San Miguel Corporation v. National Labor Relations Commission (NLRC)*,²⁷ the Court set aside the decisions of the Labor Arbiter and the NLRC that favored claimants-security guards upon the Court's review of San Miguel Corporation's second motion for reconsideration. In *Vir-Jen Shipping and Marine Services, Inc. v. NLRC*,²⁸ the Court *En Banc* reversed on a third motion for reconsideration the ruling of the Court's Division on therein private respondents' claim for wages and monetary benefits.

In *Laya, Jr. v. Philippine Veterans Bank*,²⁹ the Court summarized that it may entertain second and subsequent motions for reconsideration when the assailed decision is legally erroneous, patently unjust, and potentially capable of causing unwarranted and irremediable injury or damage to the parties. Under these circumstances, even final and executory judgments may be set aside because of the existence of compelling reasons.

In this case, the Court finds that there is a higher interest of justice in entertaining the second motion for reconsideration filed by Atty. Toledo, considering that his sole employment, which his family's livelihood and only means of support, is on the line. As will be discussed *infra*, the mitigating circumstances in favor of Atty. Toledo were not considered in the February 4, 2020 Decision and the February 16, 2021 Resolution of the Court. Thus, the Court deems it proper to resolve the second motion for reconsideration of Atty. Toledo on the merits.

Before proceeding further, it must be emphasized that, between respondents, only Atty. Toledo filed a second motion for reconsideration. Thus, the following discussions and ruling of the Court will only pertain to his administrative liability.

Atty. Toledo must be made accountable for the loss of the subject evidence

After scrutinizing the facts of this case once more, the Court remains convinced that Atty. Toledo should be made accountable for the loss of the

²⁶ 662 Phil. 572 (2011).

²⁷ 256 Phil. 271 (1989).

²⁸ 210 Phil. 482 (1983).

²⁹ 823 Phil. 302 (2018).

subject evidence, particularly, the 960.20 grams of *shabu* in Criminal Case No. 01-1229 and the 293.92 grams of *shabu* in Criminal Case No. 03-0408. As a branch clerk of court, Atty. Toledo had evident lapses because he failed to discharge his duties diligently. Indeed, he committed neglect of duty herein by failing to supervise Barcelona, who is the evidence custodian, in safekeeping the subject evidence, and give attention to a task expected of him.³⁰

As the Court pointed out in its Decision, the Revised Manual for Clerks of Court and the Rules of Court mandate that evidence turned over to the court shall be under the custody and safekeeping of the clerk of court. However, during the investigation, Atty. Toledo himself disclosed that he did not even know the contents of the steel cabinet and vault since he assumed office on October 22, 1996 because the previous branch clerk of court did not properly turn over the pieces of evidence stored in those receptacles to him.³¹ Moreover, since his appointment, he had given Barcelona a free hand to decide how to safeguard and inventory the evidence in *custodia legis*, insofar as criminal cases were concerned.³²

In line with this, the Court is not persuaded by Atty. Toledo's argument that he should not be made liable for the missing evidence, which was caused by Barcelona's negligence. While it may be sound for Atty. Toledo to argue that he should not be punished for the negligence of Barcelona, it must be emphasized that he is being held accountable for his own carelessness. He failed to supervise the safekeeping of court exhibits assiduously and to ensure that Barcelona diligently performed the task given to her.

Notably, the Court cited the case of *De la Victoria v. Cañete*³³ (*Cañete*) in the assailed February 4, 2020 Decision. In *Cañete*, the subordinate, an interpreter, was also in charge of the custody of court exhibits long before therein respondent branch clerk of court became appointed to the position. Moreover, the branch clerk of court in *Cañete* likewise failed to make an inventory of the existing Court exhibits upon his assumption and even during his tenure. Thus, as with the branch clerk of court in *Cañete*, Atty. Toledo cannot escape responsibility for the exhibits' loss, even though his subordinate was directly negligent in safekeeping the exhibits in question.

³⁰ See *Hon. Sarno-Davin v. Quirante*, A.M. No. P-19-4021, January 15, 2020, 928 SCRA 457, 467.

³¹ *Rollo*, p. 165.

³² *Id.* at 166-167.

³³ 427 Phil. 775 (2002).

On the appropriate offense committed by Atty. Toledo under the circumstances

After concluding Atty. Toledo's neglect of duty, the Court must necessarily reassess and reexamine whether his actuations and omissions amounted to simple neglect of duty, or whether they transcended to gross neglect of duty.

It is well-settled that for a government employee to be guilty of gross neglect of duty, it must be shown that said employee manifested flagrant and culpable refusal or unwillingness to perform a duty.³⁴ In contrast, simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him/her, signifying a disregard of an obligation resulting from carelessness or indifference.³⁵

In this case, the Court still finds no reason to reverse its finding that Atty. Toledo is liable for gross neglect of duty. Again, substantial amounts of drug evidence were lost under Atty. Toledo's watch. While he was not the actual evidence custodian, he still had the duty to supervise Barcelona. In addition, although there was insufficient evidence to prove that the missing exhibits had some bearing on the results of the criminal cases where those exhibits were used, the fact that court exhibits were easily stolen from the court's custody taints the well-guarded image of the Judiciary and severely affects the trust of the people in this institution. Moreover, the loss of evidence indubitably endangered public welfare, as the stolen *shabu* could have gone into the hands of unscrupulous individuals.

The penalty imposable against Atty. Toledo should be modified in view of the mitigating circumstances of this case

Nevertheless, as to the imposable penalty, the Court deems it proper to modify the February 4, 2020 Decision in light of A.M. No. 21-08-09-SC,³⁶ which was approved on February 22, 2022 and amended Rule 140 of the Rules of Court (*Rule 140*). Rule 140, as amended, provides for a framework of administrative discipline that, among others, includes a list of administrative

³⁴ See *Macaventa v. Atty. Nuyda*, A.C. No. 11087, October 12, 2020.

³⁵ *Office of the Ombudsman v. Fronda*, G.R. No. 211239, April 26, 2021, citing *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 38 (2013).

³⁶ Further Amendments to Rule 140 of the Rules of Court.

offenses with their own nomenclature, classification, and corresponding penalties, to govern administrative disciplinary cases against all Members (*i.e.*, Justices and Judges), officials, employees, and personnel of the entire Judiciary.³⁷ Sec. 24 thereof provides:

Section 24. *Retroactive Effect.* – All the foregoing provisions shall be applied to all pending and future administrative cases involving the discipline of Members, officials, employees, and personnel of the Judiciary, without prejudice to the internal rules of the Committee on Ethics and Ethical Standards of the Supreme Court insofar as complaints against Members of the Supreme Court are concerned. (Emphasis supplied)

Accordingly, when imposing the administrative penalty, the Court will no longer distinguish Members, officials, employees, and personnel of the Judiciary. Further, insofar as pending and future cases are concerned, the Court will not anymore distinguish whether the penalty imposed under this amended Rule would be prejudicial to the employee under the Uniform Rules on Administrative Cases in the Civil Service (URACCS). It effectively abandons policy of distinction made in *Dela Rama v. De Leon*,³⁸ regarding Rule 140 and the URACCS.³⁹ Thus, Rule 140, as amended, will be applied uniformly to all pending and future administrative cases, which includes the case at bench.

Under Rule 140, as amended, gross neglect of duty in the performance or non-performance is classified as a serious charge.⁴⁰ Sec. 17 of Rule 140, as amended, states the following sanctions for serious charge:

Section 17. *Sanctions.* —

(1) If the respondent is guilty of a serious charge, any of the following sanctions shall be imposed:

(a) Dismissal from service, forfeiture of all or part of the benefits as the Supreme Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled

³⁷ See 9th WHEREAS Clause in A.M. No. 21-08-09-SC.

³⁸ A.M. No. P-21-030, April 5, 2022.

³⁹ In *Dela Rama v. De Leon* (*id.*), the Court stated that “[i]n the interest of a uniform application of charges and imposition of penalties in administrative cases involving Judiciary personnel, we will apply Rule 140 of the Revised Rules of Court since it is the prevailing rule at present, unless the retroactive application of Rule 140 would not be favorable to the employee. Otherwise stated, if the application of Rule 140, as amended[,] would be prejudicial to the employee, then the framework of rules prevailing at the time of the commission of the offense should apply (*e.g.*, the URACCS in this case). This mirrors the rule in Criminal Law that penal laws shall have a retroactive effect if the same is favorable to the accused – which the Court, as a matter of policy now adopts.”

⁴⁰ Rule 140, Sec. 14(d).

corporations. *Provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits;

(b) Suspension from office without salary and other benefits for more than six (6) months but not exceeding one (1) year; or

(c) A fine of more than P100,000.00 but not exceeding P200,000.00.

Further, Rule 140, as amended, provides for mitigating circumstances, which may be considered by the Court in imposing a lesser penalty on respondent, to wit:

Section 19. *Modifying Circumstances.* — In determining the appropriate penalty to be imposed, the Court may, in its discretion, appreciate the following mitigating and aggravating circumstances:

- (1) Mitigating circumstances:
 - (a) First offense;
 - (b) Length of service of at least ten (10) years with no previous disciplinary record where respondent was meted with an administrative penalty;
 - (c) Exemplary performance;
 - (d) Humanitarian considerations; and
 - (e) Other analogous circumstances.

x x x x

Section 20. *Manner of Imposition.* — If one (1) or more aggravating circumstances and no mitigating circumstances are present, the Supreme Court may impose the penalties of suspension or fine for a period or amount not exceeding double of the maximum prescribed under this Rule.

If one (1) or more mitigating circumstances and no aggravating circumstances are present, the Supreme Court may impose the penalties of suspension or fine for a period or amount not less than half of the minimum prescribed under this Rule.

If there are both aggravating and mitigating circumstances present, the Supreme Court may offset each other.

Based on the foregoing, under Rule 140, as amended, if a mitigating circumstance exists, it may be appreciated by the Court in the determination of the imposition of the penalty against a respondent in the administrative case.

Notably, the Court's February 4, 2020 Decision did not discuss any of the mitigating circumstances alleged by Atty. Toledo in the imposition of his penalty.

In *Office of the Court Administrator v. Judge Chavez*,⁴¹ the Court cited instances where the imposition of penalties had been tempered due to the presence of mitigating circumstances, viz.:

In *Judge Isidra A. Arganose-Maniego v. Rogelio T. Salinas*, [the Court] suspended the respondent who was guilty of grave misconduct and dishonesty for a period of one (1) year without pay, taking into account the mitigating circumstances of: first offense, ten (10) years in government service, acknowledgment of infractions and reeling of remorse, and restitution of the amount involved.

In *Alibsar Adoma v. Romeo Gatcheco and Eugenio Taguba*, [the Court] suspended one of the respondents for one (1) year without pay, after finding him guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interests of the service. The respondent was a first-time offender.

And, in *Horacio B. Apuyan, Jr. and Alexander O. Eugenio v. Alfredo G. Sta. Isabel*, [the Court] imposed the same penalty of one (1)-year suspension without pay to the respondent who was a first-time offender of the offenses of grave misconduct, dishonesty, and conduct grossly prejudicial to the best interests of the service.

As regards judges, in *Office of the Court Administrator v. Aguilar*, [the Court] imposed the penalty of six months suspension instead of dismissal from service after taking into consideration the mitigating circumstances of dismissal of related criminal cases for lack of probable cause, good faith, respondent judge's strong credentials for appointment as judge, length of government service, first time offense, and remorse and promise to be more accurate and circumspect in future submissions before [the Court].

In *In Re: Petition for the Dismissal from Service and/or Disbarment of Judge Baltazar R. Dizon*, [the Court] reconsidered [its] earlier Decision dismissing from service the respondent judge and lowered the penalty to suspension from February 23, 1988 until the date of promulgation of the Resolution on May 31, 1989 after considering the mitigating circumstances of length of government service, lack of corrupt motives, environmental difficulties such as overloaded docket, unceasing strain caused by hearings on complex cases and lack of libraries, decent courtrooms, office equipment, supplies and other facilities, and humble repentance.

In *Rubin v. Judge Corpus-Cabochan*, [the Court] considered the mitigating circumstances of first offense in respondent judge's almost 23 years of government service, frail health, case load and candid admission of

⁴¹ 815 Phil. 41 (2017).

infraction in determining that the appropriate penalty to be imposed on respondent judge who was found guilty of gross inefficiency was admonition.

In *Fernandez v. Vasquez*, [the Court] appreciated the mitigating circumstances of unblemished judicial service and first offense in imposing the penalty of fine of [P50,000.00] against respondent judge who was held guilty of dishonesty, an offense punishable with dismissal even on the first commission. The fine was imposed in lieu of suspension from office which can no longer be imposed due to respondent judge's retirement.

In *Perez v. Abiera*, [the Court] imposed the penalty of fine equivalent to three-month salary of respondent judge, deductible from his retirement benefits, after appreciating the mitigating circumstances of length of service and poor health.

Thus, [the Court] exercise the discretion granted by the RRACCS and prevailing jurisprudence in the imposition of penalty and reconsider the dismissal and forfeiture of Judge Chavez's retirement benefits in view of mitigating circumstances that were overlooked and not properly appreciated.

[The Court applies] to Judge Chavez the mitigating circumstances of: (1) remorse in committing the infractions; (2) length of government service; (3) first offense; and (4) health and age. These humanitarian considerations will mitigate Judge Chavez's penalty and remove him from the severe consequences of the penalty of dismissal and forfeiture of his retirement benefits. Taking into account these mitigating circumstances, together with the aggravating circumstance of being guilty of the lesser offense of undue delay in rendering decisions, [the Court] impose the penalty of fine equivalent to three months of Judge Chavez's last salary.⁴²

To reiterate, under Sec. 20 of Rule 140, as amended, when one or more mitigating circumstance and no aggravating circumstances are present, the Court may impose, in lieu of the dismissal from the service, the penalties of suspension or fine for a period or amount not less than half of the minimum prescribed under such Rule.⁴³ On the other hand, if no mitigating circumstance exists, the Court will simply impose a specific penalty within the range provided by Rule 140, as amended, taking into consideration the relevant incidents surrounding the administrative offense.

In *Judge Ladaga v. Atty. Salilin*⁴⁴ (*Salilin*), the Court imposed the penalty of dismissal against a branch clerk of court who similarly failed to diligently keep the drug evidence under *custodia legis*. Worthy to emphasize,

⁴² Id. at 47-49. (Citations omitted)

⁴³ Rule 140, Sec. 20.

⁴⁴ A.M. No. P-20-4067, November 3, 2020.

however, that in *Salilin*, no mitigating circumstance existed which could have lowered the administrative penalty imposed against therein respondent.

In contrast, in *Re: Report on the Preliminary Results of the Spot Audit in the Regional Trial Court, Branch 170, Malabon City*⁴⁵ (*Re: Report*), the Court found that there was sufficient evidence to hold therein respondent, Judge Docena, administratively liable for gross neglect of duty for the serious mismanagement of search warrant applications in Branch 170, and failing to properly monitor the submission of returns, and that 350 returns were filed late. Moreover, 43 returns were not immediately acted upon. The charge of gross neglect of duty is classified as a grave offense punishable by dismissal from the service.

Nevertheless, in *Re: Report*, the Court took into consideration the following circumstances in Judge Docena's favor, to wit: (1) his length of service of 30 years in various sectors of the government, with eight years spent rendering service in the Judiciary as a Technical Assistant in the Supreme Court and as an RTC Judge; (2) his candid admission of his lapses and his commitment to undertake stringent steps to address the matters brought to his attention by the OCA; and (3) the fact that it was Judge Docena's first time to be administratively sanctioned by the Court.⁴⁶

Instead of imposing the penalty of dismissal, the Court imposed on Judge Docena the penalty of suspension from the office for two years without pay, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.⁴⁷

In this present case, the Court finds that there are several mitigating circumstances in favor of Atty. Toledo, particularly, (1) his more than 20 years of government service; (2) his lack of corrupt or bad motive; (3) being a first-time offender; and (4) his exemplary record.

As stated by Atty. Toledo, he has served the Judiciary for 24 years, starting in 1996 as Interpreter III until he eventually became a Clerk of Court V. This is the first time that he was held administratively liable by the Court. While a separate administrative complaint docketed as A.M. No. P-07-2403 was filed against him, said complaint was dismissed in the Court's Resolution in *Re: Toledo v. Toledo*.⁴⁸ Indeed, this present case is his first and only

⁴⁵ 817 Phil. 724 (2017).

⁴⁶ Id. at 773.

⁴⁷ Id. at 775.

⁴⁸ 568 Phil. 24 (2008).

administrative liability for an offense committed way back in 2003. The OCA does not dispute these facts.

Further, although Atty. Toledo committed gross neglect of duty in failing to properly supervise the evidence custodian of Branch 259, leading to the loss of substantial amounts of subject evidence, it is apparent that he did not commit the offense with ill, corrupt, or bad motive.

The steel cabinet, which should have contained the missing subject evidence, is located at the session room of Branch 259. On the other hand, the assigned room of Atty. Toledo is located outside the court premises, which he shares with the sheriff and the court interpreter.⁴⁹ Due to the physical set-up, Atty. Toledo could not have effectively monitored the action or inaction made by the court staff, especially since the steel cabinet was inside the court session room. While this logistical situation does not excuse Atty. Toledo's gross neglect in the performance of his duties as clerk of court, it demonstrates that he does not have ill will or corrupt motive in the entire debacle regarding the disappearance of the subject evidence. He was just grossly negligent – plain and simple – without any bad or malicious intent on his part. Further, he readily recommended the conduct of an investigation regarding the missing subject evidence and cooperated thoroughly with the same.⁵⁰ This fortifies the lack of ill motive on the part of Atty. Toledo.

Additionally, the Court finds that under the peculiar circumstances of this case, the penalty to be imposed against Atty. Toledo should be mitigated on humanitarian considerations.

Atty. Toledo is an unfortunate casualty of the circumstances. He definitely did not steal the subject evidence; rather, he was merely grossly remiss in the supervision of the evidence custodian. Dismissal is, indeed, too harsh a penalty to be imposed against him. He should not continuously be made the scapegoat and lose his means of livelihood in the process. It will be inequitable to nonchalantly impose upon Atty. Toledo the extreme penalty of dismissal, without due regard of the existing mitigating circumstances, while also turning a blind eye on the fact that the real culprit relishing the effects of his or her action since the theft transpired in 2003. This unfair situation is even more concerning considering that the thief could have also been a different court employee who remains comfortably under the Court's employ despite his or her reprehensible act.

⁴⁹ *Rollo*, p. 1128.

⁵⁰ *Id.* at 1134.

In stark contrast, Atty. Toledo has been immensely miserable until now and will be made to suffer further if the Court does not consider the aforesaid mitigating circumstances in his favor. As Atty. Toledo pointed out in his Manifestation and Motion for Reconsideration *Ad Cautelam*, he was ordered to vacate his office as soon as the executive judge received a copy of the Court's Decision. He was stripped of his only means of income at the height of the pandemic in 2020 when there was dearth of similar income-generating activities available. For more than two years, he was out of job. He was forced to look for financial opportunities elsewhere to provide food for his family. He chose to dabble in selling food rather than find work as a lawyer because he did not want to give up on his fight to return to public service where he has devoted much of his years.


In its Memorandum, the OCA stated that no mitigating circumstance can be appreciated in favor of Atty. Toledo due to the gravity of the offense he committed.⁵¹ In short, the OCA claims that Atty. Toledo's acts are irredeemable. However, considering that there is no ill motive or bad faith on the part of Atty. Toledo and that he was not the perpetrator in the pilferage of court exhibits, it would be unjust and inequitable for the Court to completely turn a blind eye to the mitigating circumstances in his favor.

In light of the existence of several mitigating circumstances, for the offense of gross neglect of duty, the Court modifies the penalty of dismissal from the service imposed in the February 4, 2020 Decision to a penalty of suspension from office without pay for a period of two years and six months, in consideration of the gravity of the offense and in line with existing jurisprudence regarding mitigating circumstances.

Considering that he has been out of the service for two years and six months since the Court promulgated its February 4, 2020 Decision, which was immediately executory, his penalty of suspension for two years and six months is deemed served. Atty. Toledo must, thus, be reinstated to his former position.

In fine, it must be emphasized that in giving weight to the factual considerations in favor of Atty. Toledo, the Court does not abdicate its duty to render justice but merely sees to it that its ruling is not only correct but just. However, Atty. Toledo must take this opportunity to become a better court employee, who lives up to his avowed duties as a sentinel of justice. He should bear in mind that the Court will not hesitate to punish him more severely for any subsequent infraction. Whenever there is an exercise of

⁵¹ Id. at 1115.

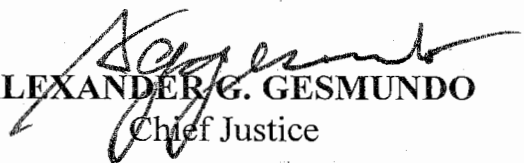


compassion in imposing administrative penalties, the Court emphatically holds all concerned court employees to their respective promises that they will not commit the same infraction, or else they will be at the end of the mailed fists of the Court. Such compassion, which is not limitless but discriminating, should not be taken for granted.⁵²

WHEREFORE, the second motion for reconsideration is **PARTIALLY GRANTED**. The Decision dated February 4, 2020 and the Resolution dated February 16, 2021 are **AFFIRMED** with **MODIFICATION** that respondent Atty. Jerry R. Toledo is found **GUILTY** of Gross Neglect of Duty and meted the penalty of **SUSPENSION** from the office without pay, for a period of two (2) years and six (6) months. He is also **STERNLY WARNED** that a repetition of the same offense or similar acts shall be dealt with more severely.

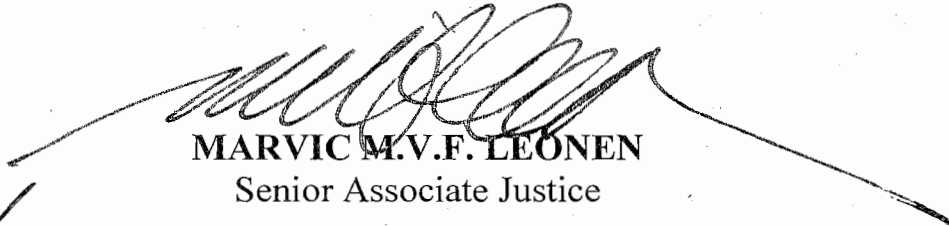
Considering that the modified penalty is now **DEEMED SERVED** by Atty. Toledo, he is **REINSTATED** to his former position.

SO ORDERED.



ALEXANDER G. GESMUNDO
Chief Justice

⁵² *Re: Employees Incurring Habitual Tardiness in the Second Semester of 2009*, 660 Phil. 608, 616 (2011).

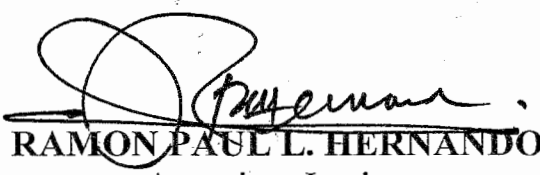
WE CONCUR:



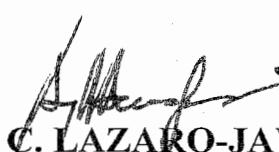
MARVIC M.V.F. LEONEN
Senior Associate Justice



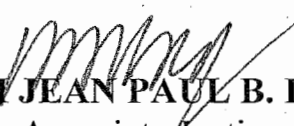
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



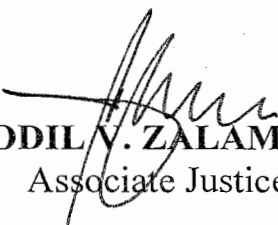
RAMON PAUL L. HERNANDO
Associate Justice



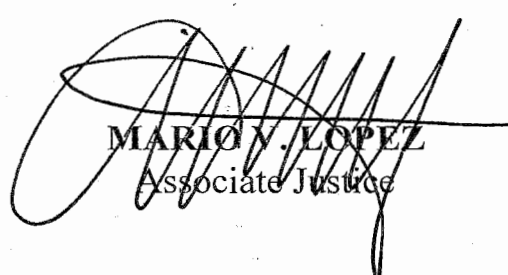
AMY C. LAZARO-JAVIER
Associate Justice




HENRI JEAN PAUL B. INTING
Associate Justice



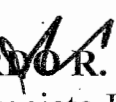
RODIL V. ZALAMEDA
Associate Justice




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

(No Part)
JOSE MIDAS P. MARQUEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice