

EN BANC

G.R. Nos. 244413 and 244415-16 – NURULLAJE SAYRE y MALAMPAD @ “INOL,” *Petitioner*, v. HON. DAX GONZAGA XENOS, in his capacity as the Presiding Judge of Regional Trial Court of Panabo City, Davao del Norte, Branch 34, HON. MENARDO I. GUEVARRA, Secretary of the Department of Justice, and PEOPLE OF THE PHILIPPINES, *Respondents*.

Promulgated:

February 18, 2020

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SEPARATE CONCURRING OPINION

LEONEN, J.:

With the ponente’s indulgence, I offer my views and observations.

On June 14, 2017, Nurullaje Sayre y Malampad alias “Inol” (Sayre) was charged with violating Sections 5, 11, and 12 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Informations against him read:

[Criminal Case No. CRC 416-2017]

That on or about 09 June 2017, within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully and willingly traded, delivered and sold zero point one zero two nine (0.1029) grams (*sic*) of Methylamphetamine Hydrochloride (Shabu) which is a dangerous drug, contained in a sachet marked as JSC-BB to PO2 Jefferjun Cabantuan who acted as poseur buyer in a legitimate buy-bust operation, and received from said poseur buyer marked money consisting of one thousand peso (P1,000.00) bill bearing serial number X114893 with the initials JSC on the forehead of Vicente Lim.

CONTRARY TO LAW.<sup>1</sup>

[Criminal Case No. CRC 417-2017]

That on or about 09 June 2017 within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully, willingly[, and] knowingly had in his possession, control and custody of Methylamphetamine Hydrochloride

<sup>1</sup> Rollo, p. 32.

(Shabu), a dangerous drug, contained in four (4) separate heat sealed transparent cellophane with their respective markings:

Marking	Weight	
JSC-P1	0.0870	zero point zero eight seven zero
JSC-P2	0.6543	zero point six five four three
JSC-P3	0.0545	zero point zero five four five
JSC-P4	0.0531	zero point zero [five] three one

CONTRARY TO LAW.<sup>2</sup>

[Criminal Case No. CRC 418-2017]

That on or about 09 June 2017, within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully, willingly[, and] knowingly had in his possession, control and custody, one (1) tooter, an equipment, instrument, apparatus and paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing dangerous drugs into the body.

CONTRARY TO LAW.<sup>3</sup>

On August 17, 2017, this Court promulgated *Estipona v. Hon. Lobrigo*,<sup>4</sup> which declared unconstitutional the prohibition against plea bargaining in Section 23<sup>5</sup> of Republic Act No. 9165.

On November 9, 2017, Sayre submitted a Proposal for Plea Bargaining for the lesser offense of violation of Section 12 of Republic Act No. 9165, “without prejudice however to the guidelines on plea bargaining yet to be released by the Supreme Court, whichever is most favorable and beneficial to the accused[.]”<sup>6</sup>

On April 10, 2018, this Court issued A.M. No. 18-03-16-SC, or the *Adoption of the Plea Bargaining Framework in Drugs Cases*, which contained a chart outlining the “Acceptable Plea Bargain” for various drug offenses:

Offense Charged			Acceptable Plea Bargain		Remarks
Section	Penalty	Quantity	Section	Penalty	
Section 11, par. 3. <i>Possession of Dangerous</i>	12 years & 1 day to 20 years and fine ranging	.01 gram to 4.99 grams	Section 12. <i>Possession of Equipment, Instrument,</i>	6 months and 1 day to 4 years and a fine	In all instances, whether or not the

<sup>2</sup> Id. at 33.

<sup>3</sup> Id. at 34.

<sup>4</sup> 816 Phil. 789 (2017) [Per J. Peralta, En Banc].

<sup>5</sup> Republic Act No. 9165 (2002), sec. 23 provided:

SECTION 23. *Plea-Bargaining Provision.* — Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.

<sup>6</sup> *Rollo*, pp. 55-56.

<i>Drugs</i> (Where quantity of shabu, opium, morphine, heroin, cocaine is less than 5 grams)	from P300,000 to P400,000		<i>Apparatus and Other Paraphernalia for Dangerous Drugs</i>	ranging from P10,000 to P50,000  N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.	maximum period of the penalty imposed is already served, drug dependenc y test shall be required. If accused admits drug use, or denies it but is found positive after drug dependenc y test, he/she shall undergo treatment and rehabilitati on for a period of not less than 6 months. Said period shall be credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/depend ency, he/she will be released on time served, otherwise, he/she will serve his
Section 11, par. 3. <i>Possession of Dangerous Drugs</i> (Where quantity of marijuana is less than 300 grams)	12 years and 1 day to 20 years and fine ranging from fine from P300,000 to P400,000	.01 gram to 299.99 grams	Section 12. <i>Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs</i>	6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000  N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty	shall be credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/depend ency, he/she will be released on time served, otherwise, he/she will serve his



				provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.	sentence in jail minus the counseling 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.
Section 11, par. 2. <i>Possession of Dangerous Drugs</i> (Where quantity of shabu, opium, morphine, heroin, cocaine is 5 grams or more but not exceeding 10 grams)	20 years to life imprisonment and fine ranging from P400,000 to P500,000	5 grams to 9.99 grams	Section 11, par. 3. <i>Possession of Dangerous Drugs</i>	12 years and 1 day to 20 years and a fine ranging from P300,000 to P400,000  N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law.	



		10 grams and above	No plea bargaining allowed		
Section 11, par. 2. <i>Possession of Dangerous Drugs</i> (Where the quantity of marijuana is 300 grams or more but not exceeding 500 grams)	20 years to life imprisonment and fine ranging from P400,000 to P500,000	300 grams to 499 grams	Section 11, par. 3. <i>Possession of Dangerous Drugs</i>	12 years and 1 day to 20 years and a fine ranging from P300,000 to P400,000	
				<i>N.B.:</i> The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law.	
		500 grams and above	No plea bargaining allowed		
Section 12. <i>Possession of Equipment, Apparatus and Other Paraphernalia for Dangerous Drugs</i>	6 months and 1 day to 4 years and fine ranging from P10,000 to P50,000		Section 15. <i>Use of Dangerous Drugs</i>	6 months treatment and rehabilitation	If accused admits drug use, or denies drug use but found positive after drug dependency test.
				Undergo counselling program at rehabilitation center	If accused is found negative for drug use/dependency
Section 14. <i>Possession of Equipment, Apparatus and Other Paraphernalia for</i>	Maximum penalty in Section 12		Section 15. <i>Use of Dangerous Drugs</i>	6 months treatment and rehabilitation	If accused admits drug use, or denies drug use but found positive

<i>Dangerous Drugs during Parties, Social Gatherings or Meetings</i>					after drug dependenc y test.
				Undergo counselling program at rehabilitati on center	If accused is found negative for drug use/depend ency
Section 5. <i>Sale, Trading, etc. of Dangerous Drugs (Methamphet amine hydrochlorid e or shabu only)</i>	Life Imprisonme nt to Death and fine ranging from P500,000 to P10,000,000	.01 gram to .99 grams (methamphe tamine hydrochlori de or shabu only)	Section 12. <i>Possession of Equipment, Instrument, Apparatus and Other Paraphernali a for Dangerous Drugs</i>	6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000  N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.	In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependenc y test shall be required. If accused admits drug use, or denies it but is found positive after drug dependenc y test, he/she shall undergo treatment and rehabilitati on for a period of not less than 6 months. Said period shall be credited to his/her penalty and the period of his 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/she will serve his sentence in jail minus the counseling 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.
		1.00 gram and above (methamphetamine hydrochloride or shabu only)	No plea bargaining allowed		
Section 5. Sale, Trading, etc. of Dangerous Drugs (Marijuana only)	Life Imprisonment to Death and fine ranging from P500,000 to P10,000,000	.01 gram to 9.99 grams of marijuana only	Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for	6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000	In all instances, whether or not the maximum period of the penalty imposed is



			<i>Dangerous Drugs</i>	<p><i>N.B.:</i> The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.</p>	<p>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 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/she will serve his sentence in jail minus the counseling</p>
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					period at rehabilitati on 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.
		10.00 grams of marijuana only and above	No plea bargain allowed		

Following this, the Office of the Court Administrator issued Office of the Court Administrator Circular No. 90-2018, enjoining all judges of second level courts to strictly comply with A.M. No. 18-03-16-SC.

The Department of Justice, for its part, issued on June 26, 2018 Department of Justice Circular No. 27, or the Amended Guidelines on Plea Bargaining for Republic Act No. 9165. This also provided its own outline of the “Acceptable Plea Bargain” per offense:

Offense Charged in the Information		Acceptable Plea Bargain	
Section	Penalty	Section	Penalty
Section 4 Importation of Dangerous Drugs	Life Imprisonment to Death & Fine from Php 500k to Php 10M	No Plea Bargain Allowed	
Section 4, par. 2 Importation of Controlled Precursors & Essential Chemicals	12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k	No Plea Bargain Allowed	
Section 4, par. 3	Maximum Penalty	No Plea Bargain	



Importation thru use of diplomatic passport, etc.		Allowed	
Section 4, par. 4 Acting as Financier in Importation	Maximum Penalty	No Plea Bargain Allowed	
Section 4, par. 5 Acting as "Protector/Coddler"	12 years & 1 day to 20 years & Fine from Php 100k to Php 500k	No Plea Bargain Allowed	
Section 5 Sale, Trading, etc. Of Dangerous Drugs	Life Imprisonment to Death & Fine from Php 500k to Php 10M	Section 11, par. 3 Possession of Dangerous Drugs  (Plea bargaining is allowed only if the drugs involved are "shabu" and/or marijuana and the quantity of "shabu" is less than 5 grams and the quantity of marijuana is less than 300 grams)	12 yrs & 1 day to 20 yrs and Fine from Php 300k to Php 400k
Section 5, par. 2 Safe, Trading, etc. of Controlled Precursor & Essential Chemicals	12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k	No Plea Bargain	
Section 5, par. 3 Sale, trading, etc. takes place within 100 meters from a school	Maximum Penalty	No Plea Bargain Allowed	
Section 5, par. 4 Drug pushers who use minors as couriers, etc	Maximum Penalty	No Plea Bargain Allowed	
Section 5, par. 5 When the victim is a minor causing the latter's death	Maximum Penalty	No Plea Bargain Allowed	
Section 5, par. 6 Acting as Financier	Maximum Penalty	No Plea Bargain Allowed	
Section 5, par. 7 Acting as "Protector/Coddler"	12 years & 1 day to 20 years & Fine from Php 100k to Php 500k	No Plea Bargain Allowed	
Section 6, par. 1 Maintenance of Den, Dive or Resort Where dangerous drugs are used or sold in any form	Life Imprisonment to Death & Fine from Php 500k to Php 10M	No Plea Bargain Allowed	



Section 6, par. 2 Maintenance of Den, Dive or Resort Where Controlled Precursors and Essential Chemicals are used or sold	12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k	No Plea Bargain	
Section 6, par. 3 Where dangerous drug is sold or delivered to a minor and is allowed to use it In such place	Maximum Penalty	No Plea Bargain Allowed	
Section 6, par. 4 When the use of dangerous drugs in such place causes the death of a person	Death & Fine from Php 1M to Php 10M imposed on owner, maintainer and/or operator	No Plea Bargain Allowed	
Section 6, par. 6 Acting as Organizer, Manager or Financier of such place	Maximum Penalty	No Plea Bargain Allowed	
Section 6, par. 7 Acting as "Protector/Coddler"	12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k	No Plea Bargain Allowed	
Section 7 Employees or Visitors of Den, Dive or Resort (Only if the accused is charged as a visitor of the drug den)	12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k	Section 12 Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs  OR  Sec. 15 Use of Dangerous Drugs	6 months & 1 day to 4 years and a Fine Ranging from Php 10k to Php 50k          6 months Rehab Use of Dangerous Drugs (1 <sup>st</sup> offense 6 years & 1 day to 12 years and a Fine Ranging from Php 50k to Php 200k (for 2 <sup>nd</sup> offense)
Section 8, par. 1	Life Imprisonment	No Plea Bargain	



Manufacture of Dangerous Drugs	to Death & Fine from Php 500k to Php 10M	Allowed	
Section 8, par. 2 Manufacture of Controlled Precursors and Essential Chemicals	12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k	No Plea Bargain	
Section 8, par. 4 Acting as Financier	Maximum Penalty	No Plea Bargain Allowed	
Section 8, par. 5 Acting as "Protector/Coddler"	12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k	No Plea Bargain	
Section 9 Illegal Chemical Diversion of Controlled Precursors and Essential Chemicals	12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k	No Plea Bargain Allowed	
Section 10, par. 1 Manufacture or Delivery of Equipment, Instruments, Apparatus and Other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (used to plant propagate, cultivate, grow, harvest, etc any dangerous drug, controlled precursor & essential chemical	12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k	No Plea Bargain	
Section 10, par. 2 If paraphernalia manufactured or delivered will be used to introduce a dangerous drug in the human body	6 months & 1 day to 4 years and fine ranging from Php 10k to Php 50k	No Plea Bargain	
Section 10, par. 3 If a minor is used to deliver such equipment, instrument, paraphernalia, etc.	Maximum Penalty	No Plea Bargain Allowed	
Section 11	Life Imprisonment	No Plea Bargain	



Possession of Dangerous Drugs (Where quantity of shabu is 50 grams or more; opium, morphine, heroin, cocaine and marijuana resin is 10 grams or more; marijuana is 500 grams or more)	to Death & Fine from Php 500k to Php 10M	Allowed	
Section 11, par. 1 Possession of Dangerous Drugs (Where quantity of shabu is 10 grams or more but less than 50 grams)	Life Imprisonment & Fine from Php 400k to Php 500k	No Plea Bargain Allowed	
Section 11, par. 2 Possession of Dangerous Drugs (Where quantity of shabu, opium, morphine, heroin, cocaine, et al is 5 grams or more but less than 10 grams; 300 grams or more but less than 500 grams of marijuana)	20 yrs and 1 day to Life Imprisonment & Fine from Php 400k to Php 500k	No Plea Bargain Allowed	
Section 11, par. 3 Possession of Dangerous Drugs (Where quantity of "shabu", opium, morphine, heroin, cocaine, et al is less than 5 grams; marijuana is less than 300 grams)	12 yrs & 1 day to 20 yrs and Fine from Php 300k to Php 400k	Section 12 Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs	6 months & 1 day to 4 years and a Fine Ranging from Php 10k to Php 50k
Section 12 Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs	6 months & 1 day to 4 years and a Fine Ranging from Php 10k to Php 50k	Section 15 Use of Dangerous Drugs  (An alternative is to allow the accused to change his plea to "guilty" and avail of the mitigating circumstance of voluntary plea of guilt)	6 months Rehab (1 <sup>st</sup> offense)  6 months & 1 day to 4 years and a Fine Ranging from Php 50k to Php 200k (for 2 <sup>nd</sup> offense)
Section 13 Possession of Dangerous Drugs	Maximum Penalties provided under Section 11	Section 11, par. 3 Possession of Dangerous Drugs	12 yrs & 1 day to 20 yrs and Fine





During Parties, Soda! Gatherings or Meetings  (Plea bargaining is allowed from Section 13 of Republic Act No. 9165 to Section 11, paragraph 3 of the same statute where the quantity of dangerous drugs Involved is less than 5 grams (in cases of "shabu", opium, cocaine, etc.) and less than 300 grams of marijuana. If the quantity of dangerous drugs Involved exceeds the above amounts, plea bargaining is prohibited.)	regardless of quantity or purity	(Plea bargaining is allowed where the quantity of "shabu", opium, morphine, heroin, cocaine, et al is less than 5 grams and marijuana is less than 300 grams. If the quantity of dangerous drugs involved exceeds the above quantities, no plea bargaining is allowed.)	from Php 300k to Php 400k
Section 14 Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings	Maximum Penalty provided under Section 12	Section 15 Use of Dangerous Drugs	6 mos. Rehab for 1 <sup>st</sup> offense; 6 yrs & 1 day to 12 yrs & fine from Php 50k to Php 200k for 2 <sup>nd</sup> offense
Section 15 Use of Dangerous Drugs	6 mos. Rehab for 1 <sup>st</sup> offense; 6 yrs & 1 day to 12 yrs & fine from Php 50k to Php 200k for 2 <sup>nd</sup> offense	No Plea Bargain	
Section 16, par. 1 Cultivating or Culture of Plants Classified as Dangerous Drugs or are Sources thereof	Life Imprisonment to Death and Fine from Php 500k to Php 10M	No Plea Bargain	
Section 16, par. 3 Acting as Financier	Maximum Penalty	No Plea Bargain Allowed	
Section 16, par. 4 Acting as "Protector/Coddler"	12 yrs & 1 day to 20 yrs and Fine from Php 100k to Php 500k	No Plea Bargain	
Section 17 Maintenance and	1 yr. and 1 day to 6 yrs, and Fine	No Plea Bargain	

Keeping of Original Records of Transactions on Dangerous Drugs and/or Controlled Precursors & Essential Chemicals	from Php 10k to Php 50k		
Section 18 Unnecessary Prescription of Dangerous Drugs	12 yrs and 1 day to 20 yrs & fine from Php 100k to Php 500k with revocation of license of practitioner	No Plea Bargain	
Section 19 Unlawful Prescription of Dangerous Drugs	Life Imprisonment to Death & Fine from Php 500k to Php 10M	No Plea Bargain Allowed	
Section 26 Attempt or Conspiracy	Penalty Provided in Previous Sections for Importation, Sale, Maintenance of Den, Manufacture & Cultivation of Dangerous Drugs	No Plea Bargain Allowed	
Section 27 Criminal Liability of Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for Confiscated Dangerous Drugs, etc.	Life Imprisonment to Death and Fine from Php 500k to Php 10M	No Plea Bargain Allowed	
Section 29 Planting of Evidence	Death	No Plea Bargain Allowed	
Section 32 Liability of Person Violating any Regulation Issued by the Dangerous Drugs Board	6 mos. & 1 day to 4 yrs and fine, from Php 10k to Php 50k	No Plea Bargain	
Section 37 Issuance of False or Fraudulent Drug Test Results	6 yrs and 1 day to 12 yrs & fine from Php 100k to Php 500k	No Plea Bargain	
Section 72 Liability of Person who violates the Confidentiality of Records (of drug dependent under voluntary	6 mos. and 1 day to 6 yrs and fine from Php 1k to Php 6k	No Plea Bargain	



submission program)			
Section 91, par. 1 Responsibility & Liability of Law Enforcement Agencies and other Government Officials and Employees in Testifying as Prosecution Witnesses in Dangerous Drugs Cases	12 yrs and 1 day to 20 yrs and fine of not less than Php 500k	Section 91, par. 2 Liability of Immediate Superior if he failed to exert reasonable effort to present witness to court	2 mos and 1 day but not more than 6 yrs and fine of not less than Php 10k but not more than Php 50k
Section 91, par. 2 Liability of Immediate Superior if he failed to exert reasonable effort to present witness to court	2 mos and 1 day but not more than 6 yrs and fine of not less than Php 10k but not more than Php 50k	No Plea Bargain	
Section 91, par. 3 Failure of Immediate Superior to Inform Court of Transfer or Re-Assignment of Accused Law Enforcement Agent	2 mos and 1 day but not more than 6 yrs and fine of not less than Php 10k but not more than Php 50k	No Plea Bargain	
Section 92 Delay and Bungling in the Prosecution of Drug Cases	12 yrs and 1 day to 20 yrs without prejudice to further prosecution under the RPC	No Plea Bargain Allowed	

Thus, Sayre filed a Motion for Approval of Plea-Bargaining Proposal with Modification,<sup>7</sup> citing A.M. No. 18-03-16-SC. To this, the prosecution filed a Comment and Counter-Proposal,<sup>8</sup> citing Department of Justice Circular No. 27.

The proposal and counter-proposal are summarized as follows:

<sup>7</sup> *Rollo*, pp. 55-59.

<sup>8</sup> *Id.* at 60-61.



CRIMINAL CASE NO.	OFFENSE CHARGED (Republic Act No. 9165)		ACCUSED'S PROPOSAL		PROSECUTION'S COUNTER- PROPOSAL	
	SECTION	PENALTY	SECTION	PENALTY	SECTION	PENALTY
CRC 416-2017  (0.1029 gram of shabu)	Sec. 5 Illegal Sale of Dangerous Drugs	Life imprisonment and a fine ranging from ₱500,000.00 to ₱10,000,000.00	Sec. 12. Possession of Paraphernalia for dangerous drugs	Imprisonment of 6 months and 1 day to 4 years	Sec. 11. Illegal Possession of Dangerous Drugs	Indeterminate Penalty of 12 years and 1 day to 14 years and 8 months and a fine of ₱300,000.00
CRC 417-2017  (0.0870 gram, 0.06543 gram, 0.0545 gram, and 0.0531 gram of shabu)	Sec. 11. Illegal Possession of Dangerous Drugs	12 years and 1 day to 20 years and a fine ranging from ₱300,000.00 to ₱400,000.00	Sec. 12. Possession of Paraphernalia for dangerous drugs	Imprisonment of 6 months and 1 day to 4 years	Sec. 12. Possession of Paraphernalia for dangerous drugs	Indeterminate Penalty of 6 months and 1 day to 4 years and a fine of ₱25,000.00
CRC 418-2017	Sec. 12. Possession of Paraphernalia for dangerous drugs	Imprisonment of 6 months and 1 day to 4 years and a fine ranging from ₱10,000.00 to ₱50,000.00	Sec. 15. Use of Dangerous Drugs	Compulsory 6-month rehabilitation	Plead to the crime as charged	Indeterminate Penalty of 6 months and 1 day to 4 years and a fine of ₱25,000.00

On October 11, 2018, the Regional Trial Court of Panabo City, Branch 34, issued an Order<sup>9</sup> stating that the prosecution and Sayre agreed to an indeterminate penalty of six (6) months and one (1) day to four (4) years for Criminal Case Nos. CRC 417-2017 and CRC 418-2017. However, since the parties could not agree on the plea bargain for Criminal Case No. CRC 416-2017, the trial court reset the pre-trial.<sup>10</sup>

On November 5, 2018, Sayre filed an Extremely Urgent Motion.<sup>11</sup> He prayed that, in view of A.M. No. 18-03-16-SC and OCA Circular No. 90-2018, he be allowed to plead to the lower offense of violating Section 12, for the possession of drug paraphernalia, in Criminal Case No. CRC 416-2017, in which he was charged with illegal sale.<sup>12</sup>

<sup>9</sup> Id. at 62–63. The Order was penned by Presiding Judge Dax Gonzaga Xenos of Branch 34, Regional Trial Court of Panabo City.  
<sup>10</sup> Id. at 62.  
<sup>11</sup> Id. at 64–67.  
<sup>12</sup> Id. at 64–65.

In its Comment (With Opposition),<sup>13</sup> the prosecution agreed with Sayre’s proposal to lower the offenses in Criminal Case Nos. CRC 417-2017 and CRC 418-2017 to violation of Sections 12 and 15, respectively. It, however, rejected his proposal in Criminal Case No. CRC 416-2017, on the ground that “[a]ny plea bargaining outside [Department of Justice Circular No. 027] is not acceptable[.]”<sup>14</sup> The prosecution maintained that it could only consent to the lower penalty of violation of Section 11:

CRIMINAL CASE NO.	OFFENSE CHARGED (Republic Act No. 9165)		ACCUSED’S PROPOSAL		PROSECUTION’S COUNTER-PROPOSAL	
	SECTION	PENALTY	SECTION	PENALTY	SECTION	PENALTY
CRC 416-2017  (0.1029 grams of shabu)	Sec. 5 Illegal Sale of Dangerous Drugs	Life imprisonment and a fine ranging from ₱500,000.00 to ₱10,000,000.00	Sec. 12. Possession of Paraphernalia for dangerous drugs	Imprisonment of 6 months and 1 day to 4 years	Sec. 11. Illegal Possession of Dangerous Drugs	Indeterminate Penalty of 12 years and 1 day to 14 years and 8 months and a fine of ₱300,000.00

Since the parties failed to reach an agreement in Criminal Case No. CRC 416-2017, the trial court issued an Order<sup>15</sup> on December 6, 2018 denying Sayre’s Motion to Plea Bargain and setting the case for pre-trial.

Sayre filed an Urgent Motion for Reconsideration,<sup>16</sup> urging the trial court to follow A.M. No. 18-03-16-SC and OCA Circular No. 90-2018, instead of Department of Justice Circular No. 027. The trial court, however, denied the Urgent Motion in its January 23, 2019 Order.<sup>17</sup>

Hence, Sayre filed a Petition for Certiorari and Prohibition<sup>18</sup> before this Court, praying that Department of Justice Circular No. 27 be declared unconstitutional for contravening OCA Circular No. 90-2018.

Petitioner argues that Department of Justice Circular No. 27 “effectively repealed, altered[,] or modified OCA Circular No. 90-2018, implementing A.M. No. 18-03-16-SC, a procedural rules (*sic*) promulgated by the Supreme Court En Banc[.]”<sup>19</sup> He asserts that “it trespassed upon the Supreme Court’s prerogative and exclusive power to promulgate rules

<sup>13</sup> Id. at 68–69.  
<sup>14</sup> Id. at 68.  
<sup>15</sup> Id. at 70–71. The Order was penned by Presiding Judge Dax Gonzaga Xenos of Branch 34, Regional Trial Court of Panabo City.  
<sup>16</sup> Id. at 72–74.  
<sup>17</sup> Id. at 77. The Order was penned by Presiding Judge Dax Gonzaga Xenos of Branch 34, Regional Trial Court of Panabo City.  
<sup>18</sup> Id. at 3–31.  
<sup>19</sup> Id. at 16.



concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts.”<sup>20</sup> He contends that the trial court gravely abused its discretion when it failed to apply Office of the Court Administrator Circular No. 90-2018, which he claims is “now deemed incorporated in Rule 118”<sup>21</sup> of the Rules of Court.<sup>22</sup>

The Office of the Solicitor General counters that petitioner’s direct resort to this Court was improper and violated the doctrine of hierarchy of courts.<sup>23</sup> It argues that Department of Justice Circular No. 27 was an exercise of the Department of Justice’s quasi-legislative power and enjoys the presumption of validity.<sup>24</sup> It contends that the Department of Justice, “as the executive arm of the government mandated to investigate the commission of crimes, prosecute offenders[,] and administer the probation and correction system, has the authority to issue [Department of Justice] Circular No. 27, it being a matter concerning the prosecution of [the] offense.”<sup>25</sup> It asserts that the questioned Circular “essentially limits the discretion of the prosecutors to consent to the offer of plea bargaining, that is, to only give their consent when it is within the allowable range provided in [Department of Justice] Circular No. 27.”<sup>26</sup>

I agree with the ponente that Department of Justice Circular No. 27 does not violate the rule-making power of this Court. A.M. No. 18-03-16-SC and Office of the Court Administrator Circular No. 90-2018 are not part of the Rules of Court. They are, like Department of Justice Circular No. 27, *internal* guidelines for plea bargaining in drug offenses. Mere conflicting provisions among these issuances will not necessarily render the executive issuance unconstitutional.

A prosecutor’s duty is to prosecute the proper offense based on the sufficiency of the evidence. Consent to a plea of guilty to a lower offense is solely within prosecutorial discretion. Courts do not have the discretion to mandate what offense the prosecution should prosecute.

## I

*People v. Villarama, Jr.*<sup>27</sup> defines plea bargaining as “a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval.”<sup>28</sup> It is usually done by the accused pleading to a lesser offense. This process is expressly provided in

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<sup>20</sup> Id. at 19.

<sup>21</sup> Id. at 23.

<sup>22</sup> Id. at 23–24.

<sup>23</sup> Id. at 119–121.

<sup>24</sup> Id. at 122–125.

<sup>25</sup> Id. at 126.

<sup>26</sup> Id. at 127.

<sup>27</sup> 285 Phil. 723 (1992) [Per J. Medialdea, First Division].

<sup>28</sup> Id. at 730 citing Black’s Law Dictionary, 5th Ed. (1979), p. 1037.



## Rule 116, Section 2 of the Rules of Court:

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.

A plain reading of this provision shows only one (1) part of the plea bargaining process: the plea of the lesser offense before the court. This presupposes that the courts only participate in the plea bargaining process once the accused has presented his or her offer and the prosecution and the private offended party has consented to the offer.

Rule 118, Section 1(a) likewise mandates the courts *to consider* plea bargaining during pre-trial:


SECTION 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[.]

The mandate *to consider* plea bargaining after arraignment does not necessarily mean that the accused must always plead guilty to the lesser offense in all criminal cases. It simply means that if the accused and the prosecution come to court with a plea bargain deal during pre-trial, the court must consider the plea bargain deal.

There is, thus, a part of the plea bargaining process that is solely within the realm of prosecutorial discretion.

This point is made even more evident by how Rule 116, Section 2 is stated. The provision's first sentence states the general rule: a plea to a lesser offense must be made *before* arraignment. The second sentence contains an exception: the accused *may* be allowed to withdraw an earlier plea of not guilty for a plea of guilty after arraignment but before trial.



Rule 116, Section 2<sup>29</sup> of the 1985 Rules of Criminal Procedure had previously allowed plea bargaining at any stage of the prosecution. In *Villarama, Jr.*, the accused pleaded to a lesser offense after the prosecution had already rested its case. This Court stated that the trial court's discretion in accepting the plea must be based on the sufficiency of the prosecution's evidence:

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*, 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*, then Justice Antonio Barredo explained clearly and tersely the rationale of the law:

. . . (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.<sup>30</sup> (Emphasis in the original, citations omitted)

Indeed, a guilty plea “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”,<sup>31</sup> rather, it should be allowed based on the sufficiency of the prosecution's evidence.

In *Daan v. Sandiganbayan*,<sup>32</sup> however, the plea to a lesser offense was made by the accused at pre-trial, before the prosecution presented its evidence. This Court cautioned that the court's exercise of discretion should not amount to grave abuse:

<sup>29</sup> RULES OF COURT (1985), Rule 116, sec. 2 provided:

SECTION 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. A conviction under this plea, shall be equivalent to a conviction of the offense charged for purposes of double jeopardy.

<sup>30</sup> *People v. Villarama, Jr.*, 285 Phil. 723, 730–731 (1992) [Per J. Medialdea, First Division] citing *People v. Kayanan*, 172 Phil. 728 (1978) [Per J. Barredo, En Banc]; and J. Barredo, Concurring Opinion in *People v. Parohinog*, 185 Phil. 266 (1980) [Per J. Abad Santos, Second Division].

<sup>31</sup> *Daan v. Sandiganbayan*, 573 Phil. 368, 377 (2008) [Per J. Austria-Martinez, Third Division] citing *People v. Kayanan*, 172 Phil. 728 (1978) [Per J. Barredo, En Banc].

<sup>32</sup> 573 Phil. 638 (2008) [Per J. Austria-Martinez, Third Division].

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As regards plea bargaining during the pre-trial stage, as in the present case, the trial court's exercise of its discretion should neither be arbitrary nor should it amount to a capricious and whimsical exercise of discretion. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.<sup>33</sup>

Nonetheless, in that case, this Court observed that the court's exercise of discretion to allow the plea to a lesser offense was supported by the favorable recommendation of the Office of the Special Prosecutor to approve the motion to plea bargain.<sup>34</sup>

The exercise of the court's discretion in allowing the plea to a lesser offense depends on whether the prosecution actually consents. In other words, the Rules of Court does not state that the prosecution must consent to a plea deal, it merely tasks the courts to exercise its discretion *after* the prosecution consents to the plea deal.

## II

*Estipona* has since settled that plea bargaining is a rule of procedure within the scope of this Court's rule-making power under the Constitution.<sup>35</sup> In view of the principle of separation of powers, the two (2) other branches of government cannot enact laws or issue orders that transgress upon this procedural rule.

A.M. No. 18-03-06-SC is, however, not a procedural rule. It is a mere *framework* to guide parties to what may be considered acceptable plea bargains in drug offenses. Nothing in it mandates that the prosecution, the accused, or the courts must strictly comply with its provisions.

The list under "Acceptable Plea Bargain" of A.M. No. 18-03-06-SC is only recommendatory. Rule 116, Section 2 of the Rules of Court gives the

<sup>33</sup> Id. at 378 citing *People v. Court of Appeals*, 545 Phil. 278 (2007) [Per J. Quisumbing, Second Division].

<sup>34</sup> Id. at 379.

<sup>35</sup> CONST., art. VIII, sec. 5 states:

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

....

(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.



court the discretion to allow the accused to plead guilty to a lesser offense. Rule 118, Section 1(a) tasks courts to consider plea bargaining during pre-trial. The Rules of Court, however, does not mandate the prosecution to consent to the plea if it falls within those listed under the “Acceptable Plea Bargain.” A.M. No. 18-03-06-SC was issued as a guideline *to the courts* as to what plea bargains it may allow in drugs cases. It is by no means a mandate to the prosecution on what offense it should prosecute.

Even *Estipona* emphasizes judicial deference in the exercise of prosecutorial discretion in the plea bargaining process:

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.

[Courts] normally must defer to prosecutorial decisions as to whom to prosecute. The reasons for judicial deference are well known. Prosecutorial charging decisions are rarely simple. In addition to assessing the strength and importance of a case, prosecutors also must consider other tangible and intangible factors, such as government enforcement priorities. Finally, they also must decide how best to allocate the scarce resources of a criminal justice system that simply cannot accommodate the litigation of every serious criminal charge. Because these decisions “are not readily susceptible to the kind of analysis the courts are competent to undertake,” we have been “properly hesitant to examine the decision whether to prosecute.”<sup>36</sup>

Department of Justice Circular No. 27, thus, cannot be considered unconstitutional for having “repealed, altered[,] or modified”<sup>37</sup> the provisions of A.M. No. 18-03-06-SC. It was issued to guide the prosecution as to whether it should give its consent to a plea bargain. Control over the prosecution of criminal offenses is not within judicial discretion. Just as legislative enactments cannot run counter to this Court’s procedural rules, so too should judicial interference not be allowed in prosecutorial decisions.

### III

A.M. No. 18-03-06-SC and Department of Justice Circular No. 27 are

<sup>36</sup> *Estipona v. Hon. Lobrigo*, 816 Phil. 789, 814–815 [Per J. Peralta, En Banc] citing *People v. Villarama, Jr.*, 285 Phil. 723, 732 (1992) [Per J. Medialdea, First Division] and *Newton v. Rumery*, 480 U.S. 386, 396 (1987).

<sup>37</sup> *Rollo*, p. 16.

not necessarily contradictory in the acceptable plea bargain for violation of Section 5 of Republic Act No. 9165. For reference:

REPUBLIC ACT NO. 9165		A.M. NO. 18-03-06-SC			DOJ CIRCULAR NO. 27		
OFFENSE	PENALTY	QUANTITY OF THE ILLEGAL DRUG	ACCEPTABLE PLEA BARGAIN	PENALTY	QUANTITY OF THE ILLEGAL DRUG	ACCEPTABLE PLEA BARGAIN	PENALTY
Sec. 5 Illegal Sale of Dangerous Drugs	Life imprisonment and a fine ranging from ₱500,000.00 to ₱10,000,000.00	0.01 gram to 0.99 grams of shabu	Section 12. Possession of Paraphernalia for dangerous drugs	6 months and 1 day to 4 years and a fine ranging from ₱10,000.00 to ₱50,000.00	Less than 5 grams of shabu and less than 300 grams of marijuana	Sec. 11. Illegal Possession of Dangerous Drugs	12 years and 1 day to 20 years and a fine of ₱200,000.00 to ₱400,000.00
		1.00 gram and above of shabu	No plea bargaining allowed				
		0.01 gram to 9.99 grams of marijuana	Section 12. Possession of Paraphernalia for dangerous drugs	6 months and 1 day to 4 years and a fine ranging from ₱10,000.00 to ₱50,000.00			
		10.00 grams of marijuana	No plea bargaining allowed				

A.M. No. 18-03-06-SC provides for a more lenient plea of violation of Section 12 for the sale of up to 0.99 gram of shabu, or up to 9.99 grams of marijuana; for the sale of 1.00 gram or more of shabu, or of 10.00 grams or more of marijuana, plea bargain is no longer allowed.

Department of Justice Circular No. 27, however, allows for a plea of violation of Section 11 for those charged with the sale of less than 5.00 grams of shabu or less than 300.00 grams of marijuana. This means that prosecutors may still consent to plea bargains for the sale of 1.00 gram to 4.99 grams of shabu or of 10.00 grams to 299.99 grams of marijuana, even though courts are cautioned not to allow any plea bargain.

Thus, for violation of sale of more than 1.00 gram to 4.99 grams of shabu and 5.00 grams to 299.99 grams of marijuana, Department of Justice Circular No. 27 is actually more beneficial to the accused.

I am, however, aware of the reality that most cases that come before this Court involve sales of less than 1.00 gram of shabu or less than 5.00 grams of marijuana. In *People v. Holgado*.<sup>38</sup>

<sup>38</sup> 741 Phil. 78 (2014) [Per J. Leonen, Third Division].



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 menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.<sup>39</sup>

This Court had the same observation in *Lescano v. People*,<sup>40</sup> which involved the sale of 1.4 grams of marijuana.

It is unfortunate that Department of Justice Circular No. 27 recommends a plea of violation of Section 11 (illegal possession) for these offenses, “in view of the intensified campaign of the government against illegal drugs.”<sup>41</sup> While drugs do pose a menace to our society, government resources should be focused more on prosecuting high-value targets, who are the actual sources of the drug menace, rather than small-time pushers. Prosecutors should bear in mind that the declared policy of the law is not to punish drug offenders but “to provide effective mechanisms or measures to re-integrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence through sustainable programs of treatment and rehabilitation.”<sup>42</sup>

This Court has likewise adopted a much stricter stance for compliance with the requirements of Section 21 of Republic Act No. 9165, as amended,<sup>43</sup> in cases involving the sale of less than 1.00 gram of *shabu* or less than 5.00 grams of marijuana.<sup>44</sup> This has resulted in a number of acquittals in recent years. The prosecution must now be ready with air-tight evidence and perfectly consistent testimonies to secure a conviction for sales of less than 1.00 gram of *shabu* or less than 5.00 grams of marijuana.

Be that as it may, the matter of consent to a plea of guilty to a lesser

<sup>39</sup> Id. at 100.

<sup>40</sup> 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

<sup>41</sup> Department of Justice Circular No. 27 (2018).

<sup>42</sup> Republic Act. No. 9165 (2002), sec. 2.


<sup>43</sup> Republic Act. No. 10640 (2014).

<sup>44</sup> See *People v. Lim*, G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>> [Per J. Peralta, En Banc].




penalty is solely within the prosecution's discretion, with which courts should not interfere absent any grave abuse.

Accordingly, I vote to **DISMISS** the Petition.



**MARVIC M.V. F. LEONEN**  
Associate Justice

CERTIFIED TRUE COPY



**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court