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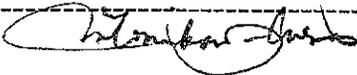
G.R. No. 254564 – PEOPLE OF THE PHILIPPINES, *Petitioner*, v. ERICK MONTIERRO Y VENTOCILLA, *Respondent*.

G.R. No. 2564974 – CYPHER BALDADERA Y PELAGIO, *Petitioner*, v. PEOPLE OF THE PHILIPPINES, *Respondent*.

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

Promulgated: July 26, 2022

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CONCURRING AND DISSENTING OPINION

SINGH, J.:

In the consolidated cases, the accused Erick Montierro y Ventocilla (**Montierro**) and Cypher Baldadera y Pelagio (**Baldadera**) were charged with Violation of Section 5, Article II of Republic Act No. 9165, or the “Comprehensive Dangerous Drugs Act of 2002” (**RA 9165**), as amended, before the Regional Trial Court, Branch 54, Naga City (**RTC**).<sup>1</sup> Both Montierro and Baldadera, prompted by the Supreme Court’s decision in *Estipona v. Lobrigo*,<sup>2</sup> filed their respective proposals for plea bargaining, adopting the provisions of A.M. No. 18-03-16-SC, or the “Plea Bargaining Framework in Drugs Cases.”<sup>34</sup> The prosecution objected to both of their proposals,<sup>5</sup> citing the Department of Justice (**DOJ**) issued Department Circular No. 061-174 (**DOJ Circular No. 61**),<sup>6</sup> which states that no plea bargain shall be allowed for a Violation of Section 5 on Illegal Sale of Dangerous Drugs.<sup>7</sup>

<sup>1</sup> *Rollo* (G.R. No. 254974), p. 53; *Rollo* (G.R. No. 254564), p. 104.

<sup>2</sup> G.R. No. 226679, 15 August 2017.

<sup>3</sup> See Office of the Court Administrator (OCA) Circular No. 90-2018 dated 4 May 2018, at <https://oca.judiciary.gov.ph/wp-content/uploads/2018/05/OCA-Circular-No.-90-2018.pdf>. Last accessed 1 July 2022.

<sup>4</sup> *Rollo* (G.R. No. 254974), p. 54; *Rollo* (G.R. No. 254564), pp. 78-79.

<sup>5</sup> *Rollo* (G.R. No. 254974), pp. 55-56; *Rollo* (G.R. No. 254564), p. 74.

<sup>6</sup> Department Circular No. 061-174, Re: Guidelines on Plea Bargaining Agreement for R.A. No. 9165 Otherwise Known as the “Comprehensive Dangerous Drugs Act of 2000 [sic],” at <https://www.doj.gov.ph/files/2017/DCs/DC2017NOV061%20Guidelines%20on%20Plea%20Bargaining%20dtd%2021%20Nov%202017.pdf>. Last accessed 1 July 2022.

<sup>7</sup> *Id.* at 2.



The RTC, in separate Orders both dated 27 June 2018,<sup>8</sup> granted Montierro and Baldadera's offer to plea bargain to the lesser offense of Violation of Section 12<sup>9</sup> of RA 9165 for *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*, and overruled the prosecution's objection. The RTC thus convicted Montierro and Baldadera accordingly,<sup>10</sup> which the Office of the Solicitor General (OSG) assailed through separate Petitions for *Certiorari* before the Court of Appeals.<sup>11</sup>

The Court of Appeals dismissed the OSG's Rule 65 Petition in Montierro's case.<sup>12</sup> There, the Court of Appeals agreed with the RTC's finding that DOJ Circular No. 61 encroached upon the Supreme Court's rule-making power.<sup>13</sup> However, in Baldadera's case, the Court of Appeals granted the OSG's Petition and set aside the 27 June 2018 Order and the subsequent Judgment.<sup>14</sup> The Court of Appeals held that the prosecution's consent is a condition *sine qua non* for the validity of Baldadera's offer to enter into a plea bargain.<sup>15</sup>

Sometime during the pendency of the separate appeals<sup>16</sup> filed by the OSG and Baldadera with this Court, the Philippine Judges Association (PJA) wrote the Court, expressing its concern that the Court's own ruling in *People v. Reafor*<sup>17</sup> and *People v. Borrás*<sup>18</sup> will render the Plea Bargaining Framework adopted by the Court as a "dead-letter rule."<sup>19</sup> The PJA also highlights the salutary aim of RA 9165 to rehabilitate drug offenders and achieve restorative justice.<sup>20</sup>

<sup>8</sup> *Rollo* (G.R. No. 254974), pp. 69-72; *Rollo* (G.R. No. 254564), pp. 74-77.

<sup>9</sup> REP. ACT NO. 9165, as amended, sec. 12, viz.: "Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs. – The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

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

<sup>10</sup> *Rollo* (G.R. No. 254974), pp. 82-83; *Rollo* (G.R. No. 254564), pp. 90-91.

<sup>11</sup> *Rollo* (G.R. No. 254974), pp. 37-45 (penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Franchito N. Diamante and Walter S. Ong concurring); *Rollo* (G.R. No. 254564), pp. 36-50 (penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Zenaida T. Galapate-Laguilles and Florencio M. Mamaug, Jr. concurring).

<sup>12</sup> *Rollo* (G.R. No. 254974), p. 44.

<sup>13</sup> *Id.*

<sup>14</sup> *Rollo* (G.R. No. 254564), p. 49.

<sup>15</sup> *Id.* at 47.

<sup>16</sup> *Rollo* (G.R. No. 254564), pp. 3-31 and *Rollo* (G.R. No. 254974), pp. 11-34.

<sup>17</sup> G.R. No. 247575, 16 November 2020.

<sup>18</sup> G.R. No. 250296, 15 March 2021

<sup>19</sup> *Rollo* (A.M. No. 21-07-16-SC), p. 1.

<sup>20</sup> *Id.* at 2.

The *ponencia* set aside the assailed rulings of the Court of Appeals.<sup>21</sup> But it ordered that the cases be remanded to the court of origin “to determine: (1) whether the evidence of guilt is strong; and (2) whether Baldadera and Montierro are recidivists, habitual offenders, known in the community as drug addicts and troublemakers, have undergone rehabilitation but had a relapse, or have been charged many times.”<sup>22</sup>

The *ponencia* devised a set of guidelines to be observed with respect to plea bargaining in drug cases (**the Guidelines**).<sup>23</sup> I had previously verbally recommended to the esteemed *ponente* Associate Justice Alfredo Benjamin S. Caguioa the addition of what is now Item No. 6 of the proposed Guidelines, for which I thank him. As a background, I handled a case while in the Court of Appeals where the RTC Decision approved a plea bargain which was contrary to both the Framework and the DOJ Circular. Hence, my request to add Item No. 6.

This Opinion, however, is my attempt to clarify what I believe is the nature of a plea bargain in relation to the Guidelines proposed.

### *The Guidelines and the concept of plea bargaining in jurisprudence*

The *ponencia* proposes a new set of guidelines applicable in plea bargaining in drug cases:

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

1. Offers for plea bargaining must be initiated in writing by way of a formal written motion filed by the accused in court.
2. The lesser offense which the accused proposes to plead guilty to must necessarily be included in the offense charged.
3. Upon receipt of the proposal for plea bargaining that is compliant with the provisions of the Plea Bargaining Framework in Drugs Cases, the judge shall order that a drug dependency assessment be administered. If the accused admits drug use, or denies it but is found positive after a drug dependency test, then he/she shall undergo treatment

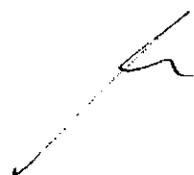
<sup>21</sup> *Ponencia*, p. 38.

<sup>22</sup> *Id.* at 38-39.

<sup>23</sup> *Id.* at 37-38.

and rehabilitation for a period of not less than 6 months. Said period shall be credited to his/her penalty and the period of his/her after-care and follow-up program if 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 will serve his sentence in jail minus the counselling period at rehabilitation center.

4. As a rule, plea bargaining requires the mutual agreement of the parties and remains subject to the approval of the court. Regardless of the mutual agreement of the parties, the acceptance of the offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the court.
  - a. Though the prosecution and the defense may agree to enter into a plea bargain, it does not follow that the courts will automatically approve the proposal. Judges must still exercise sound discretion in granting or denying plea bargaining, taking into account the relevant circumstances, including the character of the accused.
5. The court shall not allow plea bargaining if the objection to the plea bargaining is valid and supported by evidence to the effect that:
  - a. the offender is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or
  - b. when the evidence of guilt is strong.
6. Plea bargaining in drugs cases shall not be allowed when the proposed plea bargain does not conform to the Court-issued Plea Bargaining Framework in Drugs Cases.
7. **Judges may overrule the objection of the prosecution if it is based solely on the ground that the accused's plea bargaining proposal is inconsistent with the acceptable plea bargain under any internal rules or guidelines of the DOJ, though in accordance with the plea bargaining framework issued by the Court, if any.**



8. If the prosecution objects to the accused's plea bargaining proposal due to the circumstances enumerated in item no. 5, the trial court is mandated to hear the prosecution's objection and rule on the merits thereof. If the trial court finds the objection meritorious, it shall order the continuation of the criminal proceedings.
9. If an accused applies for probation in offenses punishable under 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."<sup>24</sup> (emphasis supplied)

In criminal cases, plea bargaining is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval.<sup>25</sup> In the landmark case of *Estipona v. Lobrigo*,<sup>26</sup> the Court categorically declared that plea bargaining is a rule of procedure and "is a give-and-take negotiation."<sup>27</sup>

This characteristic of mutuality is self-evident from Section 2, Rule 116 of the Revised Rules of Criminal Procedure:

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

In *Daan v. Sandiganbayan*,<sup>28</sup> the Court categorically enumerated the requisites for the validity of a plea bargain.

**"Section 2, Rule 116 of the Rules of Court presents the basic requisites upon which plea bargaining may be made, i.e., that it should be with the consent of the offended party and the prosecutor, and that the plea of guilt should be to a lesser offense which is necessarily included in the offense charged. The rules however use the word may in the second sentence of Section 2, denoting an exercise of discretion upon the trial court on whether to allow the accused to make such plea. Trial courts are exhorted to**

<sup>24</sup> Id.

<sup>25</sup> *People v. Borrás*, G.R. No. 250295, 15 March 2021.

<sup>26</sup> G.R. No. 226679, 15 August 2017.

<sup>27</sup> Id.

<sup>28</sup> G.R. Nos. 163972-77, 28 March 2008.

keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.” (citations omitted; emphasis supplied)

Thus, for there to be a valid plea bargaining agreement, the Court has previously ruled that the following factors must concur: (1) the plea bargain offered by the accused; (2) the acceptance of such plea by the prosecution; and (3) the approval by the court, in the exercise of its sound discretion.<sup>29</sup> Absence of any of the three renders the plea bargain ineffectual.

This interpretation has been highlighted long before in *People v. Hon. Villarama*,<sup>30</sup> a case involving the old “Dangerous Drugs Act of 1972,”<sup>31</sup> where the Court categorically declared:

“The counsel for the private respondent argues that only the consent of the fiscal is needed in crimes involving, violation of RA 6425 as amended because there is no offended party to speak of and that even the latter’s consent is not an absolute requirement before the trial court could allow the accused to change his plea.

We do not agree. The provision of Section 2, Rule 116 is clear. **The consent of both the Fiscal and the offended party is a condition precedent to a valid plea of guilty to a lesser offense. The reason for this is obvious. The Fiscal has full control of the prosecution of criminal actions. Consequently, it is his duty to always prosecute the proper offense, not any lesser or graver one, when the evidence in his hands can only sustain the former.**” (citations omitted; emphasis supplied)

The relevance of the ruling in *Villarama* cannot be overemphasized. Thus, in *People v. Borrás*,<sup>32</sup> the Court reiterated the need, first and foremost, for the consent of the offended party and the prosecutor:

“Contrary to the position taken by the trial court and the Court of Appeals, **the conformity of the prosecutor to the proposed plea bargaining in drugs cases is not optional, nay, to be disregarded. For 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.** As guardian of the rights of the people, the State files the criminal action in the name of the People of the Philippines. The prosecutor who represents the government is duty bound to defend the

<sup>29</sup> See *Sayre v. Hon. Xenos*, G.R. Nos. 244413 & 244415-16, 18 February 2020.

<sup>30</sup> G.R. No. 99287, 23 June 1992.

<sup>31</sup> REP. ACT NO. 6425.

<sup>32</sup> G.R. No. 250295, 15 March 2021.

public interests, threatened by crime, to the point that it is as though he or she were the person directly injured by the offense. **Viewed in this light, the consent of the offended party, i.e., the State, will have to be secured from the prosecutor who acts on its behalf.**<sup>33</sup>  
(citations omitted; emphasis supplied)

The rationale for making the acceptance of the plea bargain of the prosecution a condition precedent for the validity of a plea bargain lies, as afore-quoted, in the fact that the prosecution exercises full control over the trial of the accused – which necessarily includes the indictment of the accused for the proper offense.<sup>34</sup>

Consequent to the *sine qua non* nature of the prosecution's consent to the offer is the fact that an accused does not have any vested right to compel the prosecution to accept the plea bargain. Even when the consent is given, the court is not automatically mandated by the Rules of Court to accept the plea bargain. Again, *Estipona* is instructive:

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

[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>33</sup> Id. citing *Estipona v. Hon. Lobrigo*, G.R. No. 226679, 15 August 2017; *People v. Villarama*, G.R. No. 99287, 23 June 1992.

<sup>34</sup> RULES OF COURT, rule 110, sec. 5.



**The plea is further addressed to the sound discretion of the trial court, which may allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged.** The word may denotes an exercise of discretion upon the trial court on whether to allow the accused to make such plea. **Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.**<sup>35</sup> (citations omitted; emphasis supplied)

Where the prosecution does not consent, the Court *En Banc* held in *Sayre v. Hon. Xenos*<sup>36</sup> that the same constitutes a continuing objection to the offer of plea bargain:

“Nonetheless, a plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court. The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.

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The use of the word ‘may’ signifies that the trial court has discretion whether to allow the accused to make a plea of guilty to a lesser offense. **Moreover, plea bargaining requires the consent of the accused, offended party, and the prosecutor.** It is also essential that the lesser offense is necessarily included in the offense charged.

**Taking into consideration the requirements in pleading guilty to a lesser offense, We find it proper to treat the refusal of the prosecution to adopt the acceptable plea bargain for the charge of Illegal Sale of Dangerous Drugs provided in A.M. No. 18-03-16-SC as a continuing objection that should be resolved by the RTC.** This harmonizes the constitutional provision on the rule-making power of the Court under the Constitution and the nature of plea bargaining in Dangerous Drugs cases. DOJ Circular No. 27 did not repeal, alter, or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC.<sup>37</sup> (citations omitted; emphasis and underscoring supplied)

To place it succinctly, Section 2, Rule 116 requires the conformity of the prosecution to the reduced plea of the accused as a condition precedent for the plea bargain to be considered valid. I believe this involves a 2-step process: *first*, the prosecution must consent to the accused’s proposal for a plea bargain;

<sup>35</sup> *Estipona v. Hon. Lobrigo*, G.R. No. 226679, 15 August 2017.

<sup>36</sup> G.R. Nos. 244413, 244415-16, 18 February 2020.

<sup>37</sup> *Id.*



and *second*, the trial court must approve or disapprove the same. Absent the first step, there is no occasion for the trial court to exercise its discretion to approve or disapprove the proposal. How can there be a plea bargain agreement if both parties do not consent? Where is the “mutuality of advantage” emphasized in *Estipona*?

Thus, I agree with the proposed Guidelines only if premised on this 2-step process, and, in particular, that Item No. 7, which speaks of the objection of the prosecution, should reflect the indispensability of the prosecution’s consent in a valid plea bargain, subject to the three requisites abovementioned.

***Plea bargain and the court’s jurisdiction over the issues and the relief***

In fact, the absence of offer and acceptance, and consequently, the absence of any plea bargain, prevents the court from acquiring jurisdiction over the specific issue that plea bargain presents and the jurisdiction over the specific relief sought by both the accused and the prosecution through such an agreement.

It is interesting to note that plea bargaining, as a distinct judicial procedure, occurs during arraignment. It is during arraignment that the accused is asked to enter his or her plea.

It is elementary that a court acquires jurisdiction over the issues only after a joinder thereof.<sup>38</sup> Generally, jurisdiction over the issues pertains to a tribunal’s power and authority to decide over matters which are either disputed by the parties or simply under consideration.<sup>39</sup> In civil cases, the court’s jurisdiction over the issues is generated by the joinder of issues raised in the pleadings, or by their agreement in a pre-trial order or stipulation, or by their implied consent, as by the failure of a party to object to evidence on an issue not covered by the pleadings.<sup>40</sup>

In contrast, in criminal cases, the joinder of issues occurs during arraignment, precisely at the point where the court asks the accused whether he or she is guilty of the crime charged.<sup>41</sup> When the accused answers in the affirmative, the issues are joined and the confession of the accused operates to discharge the prosecution of the regular burden attached to proving his or

<sup>38</sup> See *Bernabe et al. v. Vergara*, G.R. No. L-48652, 16 September 1942; *Reyes v. Diaz*, G.R. No. L-48754, 26 November 1941.

<sup>39</sup> *Denila v. Republic et al.*, G.R. No. 206077, 15 July 2020.

<sup>40</sup> See RULES OF COURT, Rule 9, Sec. 5; *De Joya v. Judge Marquez*, G.R. No. 162416, 31 January 2006, 516 Phil. 717; *Sta. Ana Dy et al. v. Yu et al.*, G.R. No. 202632, 8 July 2015, 763 Phil. 491.

<sup>41</sup> *People v. Ang et al.*, G.R. No. 231854, 6 October 2020.



her guilt beyond reasonable doubt through the rigors of the ordinary course of trial.<sup>42</sup> Stated differently, “the entry of plea during arraignment x x x signals joinder of issues in a criminal action.”<sup>43</sup> The difference of joinder in issues in civil cases and criminal cases lies in the fact that the accused enjoys the constitutional presumption of innocence, with the prosecution bearing the heavy burden of proving his or her guilt beyond reasonable doubt.<sup>44</sup>

What issue is before the court when an offer to enter into plea bargaining is accepted by the prosecution? The propriety of the grant of the plea bargain is the remaining issue. It is with respect to this issue that the court’s “exercise of sound judicial discretion” becomes of relative import.

It is my humble view that when no plea bargain is presented, the trial court does not acquire any jurisdiction over the issue of the propriety of a plea bargain. Consequently, the relief sought by both the accused and the prosecution in recommending the plea bargain, that is, that a judgment be rendered without the benefit (indeed, the burden) of an exhaustive trial by the court, never materializes. The court therefore need not trouble itself with its jurisdiction over the relief afforded by plea bargaining.

The benefits of plea bargaining are not inconsequential. Even the Court has recognized the same:

“x x x. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses. Properly administered, plea bargaining is to be encouraged because the chief virtues of the system – speed, economy, and finality – can benefit the accused, the offended party, the prosecution, and the court.”<sup>45</sup> (citations omitted)

To the undersigned’s mind, this is the underlying paradigm that should govern the Court’s understanding of plea bargaining *vis-à-vis* the requisites of offer and acceptance. Such a paradigm reflects the basic character of plea bargaining – mutuality.<sup>46</sup>

I understand that these issues arose because of the contrary DOJ Circular *vis-à-vis* the Framework for Plea Bargaining that the Court issued. Although now rendered moot with the issuance of the latest DOJ Circular harmonizing their rules with the Court’s Framework, I agree that we can face

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<sup>42</sup> Nuance should not be forgotten that notwithstanding the plea of guilty by the accused, the prosecution, under the Rules of Court, is still required to, for instance, prove his guilt and the precise degree of culpability, in capital offenses. See RULES OF COURT, Rule 116, Sec. 3.

<sup>43</sup> *People v. Ang et al.*, G.R. No. 231854, 6 October 2020.

<sup>44</sup> *Id.*

<sup>45</sup> *Sayre v. Hon. Xenos*, G.R. Nos. 244413 & 244415-16, 18 February 2020.

<sup>46</sup> *Id.*



the same situation again in the future. *Estipona* is not a blanket justification – *Estipona* clearly held only that plea bargaining is a procedural device.<sup>47</sup> But *Estipona* did not change the well-settled delineation of the prosecutor's and the judge's respective roles in a criminal proceeding: the prosecutor decides what and who to charge, and the judge determines guilt or innocence, or in a plea bargain, approves or disapproves the same.<sup>48</sup>

Yes, I agree that the DOJ cannot pass rules regarding the nature of and procedure for plea bargaining. But in my respectful opinion, based on the well-established rules regarding our respective jurisdictions, the DOJ may issue rules to guide its prosecutors as to what are acceptable plea bargain proposals, akin to the guidance provided in the amount of bail to be recommended for each crime through the DOJ Bailbond Guide. When these rules are obeyed and followed by the trial prosecutors, they are merely performing their duties as mandated by law, and by our own jurisprudence. Hence, if they object to a proposal for plea bargain, they act within their authority.

Nevertheless, as already mentioned, in view of the special circumstances involving drug offenses, the *ponencia* proposes the Guidelines to avoid arbitrary and dilatory objections from the prosecution.

But the issuance of these Guidelines for me is not an exercise of any blanket authority on the part of the Court to control the results of plea bargaining. Instead, I opine that it arises out of the discretion given to the judge to approve or disapprove the proposal for plea bargain. The Guidelines will be instructive to our judges in the exercise of such discretion.

### *The Guidelines and the Fallo*

It is my considered view that Item No. 7 of the Guidelines should be deleted. Authorizing the trial court to overrule the prosecution's objection goes against the fundamental nature of a plea bargaining agreement and the respective roles of the prosecution, the defense, and the court in such a process.

On the merits of the two Petitions, I respectfully submit that the Decision dated 27 February 2020 and the Resolution dated 27 October 2020 of the Court of Appeals appealed in G.R. No. 254564, involving Montierro, should be nullified. I thus **CONCUR** with respect to setting aside these

<sup>47</sup> *Estipona v. Hon. Lobrigo*, G.R. No. 226679, 15 August 2017.

<sup>48</sup> See RULES OF COURT, rule 110, sec. 5; rule 120, sec. 1; *Mendoza v. People and Juno Cars, Inc.*, G.R. No. 197293, 21 April 2014, 733 Phil. 603, 610, citing *People v. Castillo and Mejia*, 607 Phil. 754 (2009); *Rural Bank of Mabitac, Laguna, Inc. v. Canon and Espeleta*, G.R. No. 196015, 27 June 2018, 834 Phil. 346.



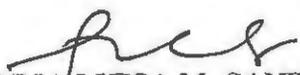
issuances of the Court of Appeals. Consequently, the Order dated 27 June 2018, the Order dated 13 August 2018, and the Judgment dated 29 August 2018 issued by the Regional Trial Court, Branch 24, Naga City, in Criminal Case No. 2017-0082 should all be struck down for granting Montierro's offer to plea bargain despite the prosecution's objection.

On the other hand, the Decision dated 1 July 2020 and the Resolution dated 26 November 2020 of the Court of Appeals concerning Baldadera should be affirmed, for ruling that the prosecution's consent is a condition *sine qua non* in plea bargaining. I respectfully **DISSENT** from nullifying these issuances for being consistent with the undersigned's analysis.

Finally, the Court's orders to remand the cases to their respective courts of origin for determination of the factors in Item No. 5 of the Guidelines, and to require Montierro and Baldadera to submit to a drug dependency test should be deleted because these no longer find support in the absence of a valid plea bargain.

  
**MARIA FILOMENA D. SINGH**  
Associate Justice

CERTIFIED TRUE COPY

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