Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CARLOS CEREZA, ROGER ESTOLONILLO, RAYMUNDO LOPEZ,* YOLANDA PASCUAL, MERLY ANN MONTES, and MAY ANN VILLA, Petitioners,	**G.R. No. 242722**
	Present:
	LEONEN, *J.*, *Chairperson*, LAZARO-JAVIER, LOPEZ, M. LOPEZ, J., and KHO, JR., *JJ.*
-versus-	
HON. DANILO V. SUAREZ, PRESIDING JUDGE, REGIONAL TRIAL COURT OF PARAÑAQUE CITY, BRANCH 259, and PEOPLE OF THE PHILIPPINES, Respondents.	**Promulgated:** OCT 10 2022

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DECISION

LOPEZ, J. *J.*:

Before this Court is a Petition for *Certiorari*[1] under Rule 65 of the Revised Rules of Court assailing the Order[2] dated August 15, 2018 rendered by the Regional Trial Court, Branch 259, of Parañaque City (*RTC*), which granted the motion to withdraw plea filed by petitioners Carlos Cereza, Roger Estolonillo, Raymundo Lopez, Yolanda Pascual, Merly Ann Montes and May Ann Villa (*Cereza, et al.*) and allowed them to enter a plea to the lesser offense under Section 11, Paragraph 3 of Republic Act No. 9165 (*R.A.*) otherwise known as the Comprehensive Dangerous Drugs Act of 2002, punishable by imprisonment of 12 years and one day to 20 years, and

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* Also referred to as Raymund Lopez in some parts of the *rollo*.

1 *Rollo*, pp. 3-29.

2 Penned by Judge Danilo V. Suarez; id. at 32-39.

a fine ranging from ₱300,000.00 to ₱400,000.00, in accordance with Department of Justice Circular No. 027 (*DOJ Circular No. 027*), instead of the lesser offense under Article II, Section 12 of R.A. No. 9165 punishable by imprisonment of six months and one day to four years, and a fine ranging from ₱10,000.00 to ₱50,000.00, following Administrative Matter (*A.M.*) No. 18-03-16-SC.[3] Likewise assailed is the Order[4] dated September 11, 2018, which denied Cereza, *et. al.*'s partial motion for reconsideration.

Facts and Antecedent Proceedings

Cereza, *et al.* were charged in an Information for violation of Section 13, in relation to Section 11 of Article II of R.A. No. 9165, which reads as follows:

> That on or about the 13th day of October 2015, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and all of them mutually helping and aiding one another each being in the approximate company of [five] (5) persons and having a social gathering, party or meeting, not being lawfully authorized to possess and/or use any dangerous drug, did then and there willfully, unlawfully, and feloniously possess or have under their control one (1) heat sealed transparent plastic sachet containing white crystalline substance marked as **'FB 10/13/15'** weighing 0.07 gram, which when tested were found positive for Methamphetamine hydrochloride, a dangerous drug.
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> CONTRARY TO LAW.[5]

On November 6, 2015, Cereza, *et al.* were arraigned, and they all entered a plea of "NOT GUILTY" to the charge against them.[6]

Thereafter, on July 5, 2018, Cereza, *et al.* filed a Motion to Withdraw Plea[7] pursuant to this Court's ruling in *Estipona v. Hon. Lobrigo* (*Estipona*).[8] In their motion, Cereza, *et al.* argued that this Court did not limit the offenses under R.A. No. 9165 which may be subject to plea bargaining. They also claimed that even the offense of Sale, Trading, Administration of Dangerous Drugs, which is punishable with life imprisonment to death, may be the subject of plea bargaining. As such, plea bargaining should likewise be allowed for a violation of Section 13, Article II of R.A. No. 9165, which is punishable by life imprisonment. Cereza, *et al.*, thus prayed that they be allowed to enter a plea of guilty for violation of Section 12, Article II of

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3 Adoption of the Plea Bargaining Framework in Drugs Cases dated April 10, 2018.
4 *Rollo*, pp. 40-43.
5 Id. at 5-6. (Emphasis in the original)
6 Id. at 50-51.
7 Id. at 52-55.
8 816 Phil. 789 (2017).

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R.A. No. 9165 in accordance with A.M. No. 18-03-16-SC or the Adoption of the Plea Bargaining Framework in Drugs Cases dated April 10, 2018.

On August 7, 2018, the public prosecutor filed a Comment/Opposition[9] thereto, which was responded to by a Reply[10] that was filed by Cereza, *et al.* on August 9, 2018.

Then, on August 15, 2018, the RTC, Branch 259, of Parañaque City issued an Order,[11] the dispositive portion of which reads:

> WHEREFORE, premises considered, upon a thorough evaluation of the pieces of evidence so far presented in this case **the *Motion to Withdraw Plea*** dated 04 July 2018 filed by accused through counsel, Atty. Isser Josef V. Gatdula of the Public Attorney's Office (PAO) is hereby **GRANTED.**
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> Accordingly and applying **DOJ Circular No. 027** which allows for plea-bargaining for the offense of violation of Section 13, Art. II of [R.A. No.] 9165 to the lesser offense of Section 11, par 3 of [R.A. No.] 9165, the herein accused are hereby allowed to withdraw their earlier plea of NOT GUILTY to violation of Section 13, Art. II of [R.A. No.] 9165 and plead guilty to the lesser offense of Section 11, par 3 of [R.A. No.] 9165 with the possible penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from [₱]300,000.00 to [₱]400,000.00.[12]

In issuing the assailed Order, the RTC ratiocinated that an accused charged with violation of Sec. 13 is explicitly excluded by A.M. No. 18-03-16-SC, considering that the imposable penalty is life imprisonment or life imprisonment to death. Moreover, the possession contemplated under Section 13 does not take into account the quantity and purity of the dangerous drugs, despite the graduated weights and corresponding penalties under Section 11 of R.A. No. 9165. Nonetheless, with the issuance of DOJ Circular No. 027, which was released after A.M. No. 18-03-16-SC, and which took into account the framework of this Court, a plea bargaining for violation of Section 13 of R.A. No. 9165 may be allowed. Under the DOJ Circular, the penalties to be applied for violation of Section 13, being in relation to that of Section 11, would be based on the amount of drugs that was recovered from the accused.[13]

On August 22, 2018, Cereza, *et al.* filed a Partial Motion for Reconsideration,[14] which was denied in an Order dated September 11, 2018.[15]

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9 *Rollo*, pp. 56-57.
10 Id. at 58-62.
11 Id. at 32-39.
12 Id. at 39. (Emphasis in the original)
13 Id. at 38.
14 Id. at 63-74.
15 Id. at 40-43.

Undeterred, Cereza, *et al.* now come before this Court as a direct resort to challenge the above Orders.

Issues

I

Whether DOJ Circular No. 027 of the Department of Justice is unconstitutional when it encroached upon the rule-making power of the Supreme Court

II

Whether petitioners are entitled to plea bargain pursuant to A.M. No. 18-03-16-SC

III

Whether the drug dependency assessment under DOJ Circular No. 027 is unconstitutional for violating the constitutional right of the accused to privacy and self-incrimination

IV

Whether the public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it allowed the petitioners to plead guilty to Section 11(3) of Republic Act No. 9165 instead of Section 12 of Republic Act No. 9165, which is favorable to the petitioners

Petitioners' arguments

In resorting directly before this Court, Cereza, *et al.* argue that the present case presents compelling circumstances that warrant the exercise of this Court's jurisdiction. According to Cereza, *et al.*, considering that there have been an influx of motions to enter into plea bargaining due to the *Estipona*[16] ruling, there is a need to resolve immediately, whether DOJ Circular No. 027 is unconstitutional due to the following reasons: (a) for encroaching upon the power of the Supreme Court to promulgate rules of procedure and (b) for violating the accused's right to privacy and self-incrimination because of the requirement of prior drug dependency examination as a condition *sine qua non* before the prosecution give its consent to plea bargain. [17]

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16 *Supra* note 8.

17 *Rollo*, p. 13.

Cereza, *et al.* argue that DOJ Circular No. 027 encroached upon the rule making power of this Court as it permitted to plea bargain for Sections 7 and 13 of R.A. No. 9165, offenses which were not specifically identified in A.M. No. 18-03-16-SC. It also effectively increased the penalty in plea bargaining for Violation of Section 5 of R.A. No. 9165 from six months and one day to four years, and a fine ranging from ₱10,000.00 to ₱50,000.00 to imprisonment of 12 years and one day to 20 years, and a fine from ₱300,000.00 to ₱400,000.00.[18] In addition, it mandated trial prosecutors, upon receipt of the motion for plea bargain to ask the court that a drug dependency assessment be administered as a condition *sine qua non* before the prosecution gives its consent to the plea bargain. This requirement allegedly runs counter to the framework provided by this Court that drug dependency assessment is only required after the acceptance of the plea bargain in order to determine whether the accused shall be required to undergo treatment or rehabilitation for a period of six months. This further transgressed the right of the accused to privacy and against self-incrimination.[19]

Cereza, *et al.* add that the offense under Section 5 of R.A. No. 9165 is punishable with life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00, yet under A.M. No. 18-03-16-SC, the offender may plea bargain to a lesser offense of Section 12 if the shabu seized is not more than 0.99 grams. Further, possession of dangerous drugs that is less than five grams under Section 11(3) of R.A. No. 9165 may also plea bargain to a violation of Section 12, wherein the penalty is six months and one day to four years and a fine ranging from ₱10,000.00 to ₱50,000.00. As Cereza, *et al.* were charged with violation of Section 13 of R.A. No. 9165, which is also punishable with life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00 for allegedly possessing a single sachet of shabu weighing 0.07 gram, then by analogy, the rules on plea bargaining covering violation of Section 5, allowing a plea bargain to Section 12, being favorable to the accused, should likewise be applied.[20]

Respondents' arguments

In its Comment[21] dated October 10, 2019, the Office of the Solicitor General (*OSG*) dismissed the arguments of Cereza, *et al.*, arguing that the RTC merely applied DOJ Circular No. 027. Said circular only allows Cereza, *et al.* charged with violation of Section 13 of R.A. No. 9165, as amended, to plead guilty to the lesser offense of Section 11, Paragraph 3 of R.A. No. 9165, as amended, and not under Section 12 thereof. Moreover, A.M. No. 18-03-16-SC does not expressly include in its coverage, violation

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18 Id. at 16.
19 Id. at 18-20.
20 Id. at 21-22.
21 Id. at 99-113.

of Section 13, R.A. No. 9165, as amended.[22] The OSG added that DOJ Circular No. 027 does not encroach upon the rule making power of this Court as it falls under the inherent power of the executive department, or the DOJ to adopt rules and regulations. It was designed to carry out the provisions of R.A. No. 9165, as amended, on plea bargaining, conformably with the ruling of this Court in *Estipona.*[23]

Our Ruling

Before going into the merits, this Court shall first address the mode of review by which petitioners brought their case.

The special civil action of *certiorari* under Rule 65 is an original action that is resorted to before the proper court upon alleging facts constituting an act without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction committed by any tribunal, board, or officer exercising judicial or quasi-judicial functions. It is also required that the party resorting to this remedy has no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[24]

In this case, no appeal, or any plain, speedy and adequate remedy may be always availed of by petitioners considering that the assailed Order is an interlocutory order. As defined, an interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether an order or a judgment is interlocutory or final is: Does the order or judgment leave something to be done in the trial court with respect to the merits of the case? If it does, the order or judgment is interlocutory; otherwise, it is final.[25] As can be gleaned from the disposition rendered by the RTC, the pending incident resolved merely pertained to the allowance of petitioners' motion to withdraw their plea, and on which lesser offense should they be allowed to negotiate for a plea bargain deal. There was yet no sentence that was handed down or any penalty imposed.

Being an interlocutory order, the remedy to assail the same is an appropriate special civil action under Rule 65, provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion.[26] It must be added that for a petition for *certiorari* to be considered appropriate, the same must be filed in the proper court following the principle of hierarchy of courts.

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22 Id. at 105.
23 Id. at 107-108.
24 Rules of Court, Rule 65, Sec. 1.
25 *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 334 (2011).
26 Id. at 335.

Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket. Nonetheless, the invocation of this Court's original jurisdiction to issue writs of *certiorari* has been allowed in certain instances on the ground of special and important reasons clearly stated in the petition.[27] In the case of *Gios-Samar, Inc. v. Department of Transportation and Communications*,[28] this Court, citing *The Diocese of Bacolod v. COMELEC*,[29] simplified the exceptions to the principle of hierarchy of courts as follows:

> *The Diocese of Bacolod v. Commission on Elections* (*Diocese*) summarized these circumstances in this wise:
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> (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
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> (2) when the issues involved are of transcendental importance;
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> (3) cases of first impression;
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> (4) the constitutional issues raised are better decided by the Court;
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> (5) exigency in certain situations;
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> (6) the filed petition reviews the act of a constitutional organ;
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> (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and
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> (8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."[30]

The instant case serves as an exception to the rule. The petition calls for this Court to decide on questions involving public welfare and the advancement of public policy considering that it affects the rules on plea bargaining and requires the harmonization of rules.

Now on the merits.

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27 *Dy v. Judge Bibat-Palamos*, 717 Phil. 776, 783 (2013).
28 G.R. No. 217158, March 12, 2019, 896 SCRA 213.
29 751 Phil. 301 (2015).
30 *Supra* note 28, at 278.

Essentially, petitioners assert that having been charged with violation of Section 13 of R.A. No. 9165, they should be allowed to plea bargain to a violation of Section 12, which is punishable by imprisonment of six months and one day to four years, and a fine ranging from ₱10,000.00 to ₱50,000.00 in conformity with A.M. No. 18-03-16-SC and not to a violation of Section 11, Paragraph 3, which is punishable by imprisonment of 12 years and one day to 20 years, and a fine ranging from ₱300,000.00 to ₱400,000.00.

In the assailed Order, the provision under DOJ Circular No. 027 applied by the RTC, provides the following:

Offense Charged in the Information		**Acceptable Plea Bargain**	
Section	Penalty	Section	Plea
Section 13 *Possession of Dangerous Drugs During Parties, Social 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.)	Maximum penalties provided under Section 11 regardless of quantity or purity	Section 11, par. 3 *Possession of Dangerous Drugs* (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.)	12 yrs .& 1 day to 20 yrs. and Fine from [₱300,000.00] to [₱400,000.00]

Petitioners nonetheless seek the application of A.M. No. 18-03-16-SC, citing Section 11 of R.A. No. 9165, considering that a violation of Section 13 is made punishable in relation to Section 11. The pertinent provision reads as follows:

Offense Charged			Acceptable Plea Bargain		Remarks
Section	Penalty	Quantity	Section	Penalty	
Section 11, par. 3. *Possession of Dangerous Drugs* (Where quantity of [*shabu*], opium, morphine, heroin, cocaine is less than 5 grams)	12 years & 1 day to 20 years and fine ranging from ₱300,000 to ₱400,000	.01 gram to 4.99 grams	Section 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*	6 months and 1 day to 4 years and a fine ranging from ₱10,000 to ₱50,000 *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 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 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.

While there was no provision for an acceptable plea bargain for violation of Section 13 of R.A. No. 9165 under A.M. No. 18-03-16-SC at the time when petitioner filed his motion with the RTC, it bears noting that on June 4, 2019, a Resolution was issued by the Court *en banc*, now including violation of Section 13 in the framework for plea bargaining, which reads as follows:

Offense Charged in the Information			**Aceeptable Plea Bargain**		**Remarks**
Section	Penalty	Quantity	Section	Penalty	
Section 13. *Possession of Dangerous Drugs* During Parties, Social Gatherings or Meetings	Maximum penalties provided under Section 11 regardless of quantity or purity.	.01 gram to 4.99 grams	Section 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*	6 months and 1 day to 4 years and a fine ranging from ₱10,000 to ₱50,000 *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 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 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.

The subsequent inclusion of a violation of Section 13 of R.A. No. 9165 in A.M. No. 18-03-16-SC may have strengthened the stand of petitioners as it prescribed an acceptable plea bargain for the lesser offense of Section 12 of R.A. No. 9165. It is a rule that statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage.[31] This is because no person has a vested right in any particular remedy.[32] Thus, the amendment may be taken into consideration in resolving the plea bargain offer of the petitioners. However, this does not have the effect of nullifying the provisions of DOJ Circular No. 027.

Petitioners now claim that DOJ Circular No. 027 encroached upon the rule-making power of this Court.

We disagree.

The argument raised by the petitioners has already been squarely addressed in the case of *Sayre v. Hon. Xenos*,[33] when this Court held as follows:

> In this petition, A.M. No. 18-03-16-SC is a rule of procedure established pursuant to the rule-making power of the Supreme Court that serves as a framework and guide to the trial courts in plea bargaining violations of R.A. 9165.
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> 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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31 *Tan, Jr. v. Court of Appeals*, 424 Phil. 556, 569 (2002).
32 Id.
33 G.R. No. 244413 & 244415-16, February 18, 2020.

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> 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.
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> Therefore, the DOJ Circular No. 27 provision pertaining to acceptable plea bargain for Section 5 of R.A. 9165 did not violate the rule-making authority of the Court. DOJ Circular No. 27 merely serves as an internal guideline for prosecutors to observe before they may give their consent to proposed plea bargains.[34]

Indeed, plea bargaining requires the consent, not only by the accused, but also of the offended party and the prosecution. Considering that a violation of the Dangerous Drugs Act is a crime against public order, there is no private offended party involved, thereby highlighting the role of the State in safeguarding the people against societal ills caused by the caused by the widespread presence of dangerous drugs. The executive department, carrying the power and the responsibility to enforce laws, must therefore exercise the proper discretion in seeking for the punishment of those who keep the supply of drugs, and safeguarding those who fall victims to drug dependency, and in seeking punishment of those responsible in the proliferation of dangerous drugs in the country.

While DOJ Circular No. 027 provides a higher penalty range for acceptable plea bargain as compared to A.M. No. 18-03-16-SC, the executive department's participation in the administration of justice, through the actions taken by prosecutors, which requires the exercise of their discretion, must be respected. This exercise of discretion is made manifest when a plea bargaining offer is made by an accused. This is because the Rules require the prosecutor's consent before a plea bargain may be approved. This is provided under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, which reads as follows:

> 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.

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34 Id. (Citation omitted)

Clearly, a plea of guilty to a lesser offense requires the consent of the prosecutor. This is in line with the role of the prosecutor as the one who directs and controls the prosecution of criminal cases. In giving consent, the prosecutor acts as an officer of the executive department and it is only appropriate to have guidelines, as directed by DOJ Circular No. 027, in order to serve as a guide for the prosecutors before they give their consent to plea bargaining in drugs cases.

The role of the prosecutors in plea bargaining was explained in *Estipona*[35] as follows:

> Under the present *Rules,* the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.
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> > [Courts] normally must defer to prosecutorial decisions as to whom to prosecute. The reasons for judicial deference are well known. Prosecutorial charging decisions are rarely simple. In addition to assessing the strength and importance of a case, prosecutors also must consider other tangible and intangible factors, such as government enforcement priorities. Finally, they also must decide how best to allocate the scarce resources of a criminal justice system that simply cannot accommodate the litigation of every serious criminal charge. Because these decisions "are not readily susceptible to the kind of analysis the courts are competent to undertake," we have been "properly hesitant to examine the decision whether to prosecute."
>
> 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.
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> Plea bargaining is allowed during the arraignment, the pre-trial, or even up to the point when the prosecution already rested its case. As regards plea bargaining during the pre-trial stage, the trial court's exercise of discretion should not amount to a grave abuse thereof. "Grave abuse of discretion" is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility; it arises when

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35 *Supra* note 8.

> a court or tribunal violates the Constitution, the law or existing jurisprudence.
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> If the accused moved to plead guilty to a lesser offense subsequent to a bail hearing or after the prosecution rested its case, the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged. The only basis on which the prosecutor and the court could rightfully act in allowing change in the former plea of not guilty could be nothing more and nothing less than the evidence on record. As soon as the prosecutor has submitted a comment whether for or against said motion, it behooves the trial court to assiduously study the prosecution's evidence as well as all the circumstances upon which the accused made his change of plea to the end that the interests of justice and of the public will be served. The ruling on the motion must disclose the strength or weakness of the prosecution's evidence. Absent any finding on the weight of the evidence on hand, the judge's acceptance of the defendant's change of plea is improper and irregular. [36]

The essence of a plea bargaining 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.[37]

It must be noted that the acceptable plea bargains under A.M. No. 18-03-16-SC serves as a framework and not an iron-clad procedure that must be rigidly applied. It provides a list of cases that the violations under R.A. No. 9165 can be the subject of plea bargaining. Concomitant thereto, it also provided the limit up to what extent a plea bargain may be allowed. Considering that DOJ Circular No. 027 does not provide acceptable plea bargains that are lower than the acceptable plea bargains under A.M. No. 18-03-16-SC, the same must stay.

Guidelines in plea bargaining

Notwithstanding the latitude of discretion given to public prosecutors to give or withhold their consent to a plea bargain, courts must still exercise sound discretion in granting or denying a plea bargain. In *People v. Montierro* (*Montierro*),[38] this Court enumerated the guidelines that shall be observed by trial court judges in plea bargaining in drugs cases as follows:

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

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36 Id. at 814-817. (Emphasis in the original and citations omitted)
37 Id. at 813. (Citation omitted)
38 G.R. No. 254564, July 26, 2022.

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

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

4. As a rule, plea bargaining requires 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 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 thereto. 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. 90165, other than for illegal drug trafficking or pushing under Section 5 in relation to Section 24 thereof, then the law on probation shall apply.[39]

The foregoing guidelines considered, the trial court cannot automatically pronounce a verdict of conviction to an offense that fits the plea bargain guidelines of the DOJ. While the DOJ is given the power to promulgate its own rules in giving or withholding consent to a plea bargain, courts must still exercise proper discretion. The seventh guideline even mandates that 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. In the exercise of their discretion, trial court's duty is to evaluate the qualifications of the accused and the circumstances or evidence of the case,[40] in line with the fifth guideline.

It must be noted that plea bargaining presupposes that the person who is thereby allowed to enter a plea to a lesser offense has been determined to be capable of undergoing the process of reformation within a shorter period of time. By allowing a shorter period of incarceration, plea bargaining serves to help an accused to eventually integrate themselves to the society as a reformed individual. As such, allowing a plea bargaining carries an underlying determination that the accused has the character to discern the consequences of their acts and the subsequent adjustment he/she has to make so that they may not be incarcerated again.

Consequently, trial courts must have a reasonable basis in granting or denying an application for plea bargaining. The evidence presented by the prosecution must be taken into consideration. Likewise, the character of the accused must also be taken into consideration, specifically, whether they are a recidivist, a habitual offender, are known in the community as a drug addict and a troublemaker, have undergone rehabilitation but had a relapse, or have been charged many times. The decision must not hinge solely on the fact that the public prosecutor raised DOJ Circular No. 027 and that it is the plea bargain therein that is applicable. To rely on the DOJ Circular alone would be insufficient and operates as an abuse of discretion resulting into lack or excess of jurisdiction.

In this case, the trial court simply allowed petitioners to enter a plea of guilty to the lesser offense of violation of Section 11, par. 3 of R.A. No. 9165 without a proper assessment of the qualifications of the accused and the evidence on record. A remand of this case is thus necessary in order to take into consideration the *Montierro* guidelines.

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39 Id. (Emphasis in the original)

40 Id.

Conduct of a drug dependency assessment in plea bargaining

Petitioners also claim that the requirement of a drug dependency assessment violates petitioners' right to privacy and against self-incrimination considering that it is a requirement imposed by DOJ Circular No. 027 before the prosecutor gives them consent to a plea bargain. The pertinent provision of the circular reads:

> All offers for plea bargaining must be initiated in writing by way of a formal motion filed by the accused in court. Upon receipt of a proposal for plea bargaining from the accused which falls under these guidelines, the trial prosecutor shall request the court to order that a drug dependency assessment be administered on the accused pursuant to A.M. 18-03-16-SC. The drug dependency report shall be a condition *sine qua non* for the prosecution to give its consent to the plea bargain.[41]

The *Montierro* guidelines settles this issue. As stated above, upon receipt of a proposal for plea bargaining, the judge is now mandated to order that a drug dependency assessment be administered on the accused. Considering that one of the factors to be considered in granting or denying an application for a plea bargain is the character of the accused, and given the shorter period to be imposed for the incarceration and eventual reformation of an accused, it is only proper to have an underlying basis in the assessment of these factors. The result of a drug dependency test aids the trial courts in making these assessments.

Moreover, in the case of *Dela Cruz v. People*,[42] the Court already recognized the conduct of a drug test to persons apprehended for violations committed under Article II of R.A. No. 9165, thus:

> The drug test in Section 15 does not cover persons apprehended or arrested for any unlawful act, but only for unlawful acts listed under Article II of R.A. 9165.
>
> **First, "[a] person apprehended or arrested" cannot literally mean any person apprehended or arrested for any crime.** The phrase must be read in context and understood in consonance with R.A. 9165. Section 15 comprehends persons **arrested or apprehended for unlawful acts listed under Article II** of the law.
>
> Hence, a drug test can be made upon persons who are apprehended or arrested for, among others, the "importation," "sale, trading, administration, dispensation, delivery, distribution and transportation", "manufacture" and "possession" of dangerous drugs and/or controlled precursors and essential chemicals; possession thereof "during

41 Id.

42 739 Phil. 578 (2014).

> parties, social gatherings or meetings" ; being "employees and visitors of a den, dive or resort"; "maintenance of a den, dive or resort"; "illegal chemical diversion of controlled precursors and essential chemicals:"; "manufacture or delivery" or "possession" of equipment, instrument, apparatus, and other paraphernalia for dangerous drugs and/or controlled precursors and essential chemicals; possession of dangerous drugs "during parties, social gatherings or meetings"; "unnecessary" or "unlawful" prescription thereof; "cultivation or culture of plants classified as dangerous drugs or are sources thereof"; and "maintenance and keeping of original records of transactions on dangerous drugs and/or controlled precursors and essential chemicals."[43]

Clearly, the law allows the conduct of a drug test as early as the time when a person is apprehended for specific violations of the Dangerous Drugs Act. This includes a violation of Section 13, of which petitioners were charged with. Thus, even before the police officers file a complaint before the prosecutor for purposes of preliminary investigation of acts committed in violation of those falling under Title II of R.A. No. 9165, a drug test may already be conducted. No justifiable reason exists to subsequently disallow a drug test at a time when an Information has already been filed in court, especially that this presupposes that probable cause to charge the accused has already been determined. This condition is not intended for the public prosecutor to give their consent; rather, it serves as a condition by the court in the evaluation of a plea bargaining proposal.

To reiterate, the guidelines issued by this Court serves as the authority for the trial courts to decide on an application for plea bargaining. While public prosecutors may give or withhold their consent thereto, trial courts are authorized to overrule their objection when the same are not based on the pieces of evidence presented. Reiteration of principles such as the executive's war on drugs or being tied up to guidelines issued by the DOJ are not sufficient reasons to deny an application for a plea bargain. Being courts of law, trial courts must be guided by the Rules on Evidence. Any principle espoused by the public prosecutor must thus be complemented by corresponding evidence to a particular case, and it is these pieces of evidence that the trial courts must carefully examine.

As the latest issuance of this Court in A.M. No. 21-07-16-SC serves as a procedural guide that has a retroactive application, this Court finds the need to REMAND the instant case to the court of origin for the latter to properly exercise discretion based on the latest guidelines and not for the trial court to simply rely on the provisions of DOJ Circular No. 027.

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[43] Id. at 585-586. (Emphasis in the original and citations omitted)

ACCORDINGLY, the Orders dated August 15, 2018 and September 11, 2018 rendered by the Regional Trial Court, Branch 259, of Parañaque City are **SET ASIDE**. The cases against Carlos Cereza, Roger Estolonillo, Raymundo Lopez, Yolanda Pascual, Merly Ann Montes, and May Ann Villa are **REMANDED** to the court of origin to determine their qualifications and the evidence pertaining to their cases in accordance with the *Montierro* guidelines for evaluation of their plea bargaining proposal.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

MARVIC M.V. F. LEONEN
Senior Associate Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V. F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice