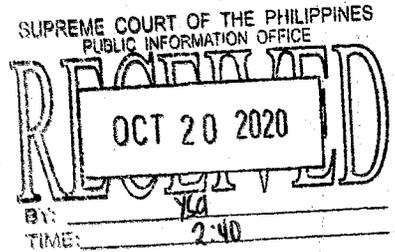




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 22, 2020**, which reads as follows:

**“G.R. No. 234953 (People of the Philippines, Plaintiff-Appellee, v. Reynaldo M. Jabao and Michael T. Rodriguez, Accused-Appellants).** – This appeal<sup>1</sup> seeks to reverse and set aside the 08 August 2017 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 01435-MIN, which affirmed the 23 June 2015 Judgment<sup>3</sup> of Branch 40, Regional Trial Court (RTC) of Cagayan de Oro City and docketed therein as Criminal Case No. 2010-193. The RTC found Reynaldo Jabao (Jabao) and Michael Rodriguez (Rodriguez), collectively referred to as accused-appellants, guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, or the Comprehensive Dangerous Drugs Act of 2002.

**Antecedents**

In an Amended Information dated 17 May 2010, accused-appellants were charged with the crime of delivery of dangerous drugs, or violation of Section 5, paragraph 1 in relation to Section 26, Article II of RA 9165, the accusatory portion of which states:

That on December 27, 2009, at about 12:30 o'clock in the [afternoon], more or less, at Ramon Chavez Street, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, without being authorized by law to sell, trade, administer, dispense, deliver and give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there, willfully, unlawfully, criminally and knowingly sell and/or offer to sell and give away to a poseur buyer/decoy, One (1) heat-sealed transparent plastic sheet containing white crystalline substance of Metamphetamine

<sup>1</sup> *Rollo*, pp. 27-29.

<sup>2</sup> *Id.* at 3-26; penned by Associate Justice Ronaldo B. Martin and concurred in by Associate Justices Romulo V. Borja and Louis P. Acosta of Special Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

<sup>3</sup> *CA rollo*, pp. 42-55; penned by Presiding Judge Ma. Corazon B. Gaité-Llanderal.

hydrochloride, locally known as Shabu, a dangerous drug, weighing 0.24 gram, in consideration of Php6,500.00, after a confirmatory test conducted by the PNP Crime Laboratory, was found positive for the presence of Metamphetamine hydrochloride, accused knowing fully well that it is a dangerous drug.

Contrary to law.<sup>4</sup>

Accused-appellants were arraigned on 24 May 2010 and pleaded not guilty<sup>5</sup> to the charges. After pre-trial, trial on the merits ensued.

### Version of the Prosecution

On 27 December 2009, the Philippine Drug Enforcement Agency (PDEA) Region 10 operatives received information from a confidential informant that accused-appellants, purportedly engaged in the sale of illegal drugs, were willing to deliver *shabu* at an agreed place and time. Consequently, an entrapment team was formed with SI2 Rodolfo S. Dela Cerna (SI Dela Cerna), IO2 Vincent Cecil M. Orcales (IO2 Orcales) and IO2 Pimentel as its members.<sup>6</sup>

After coordinating with the local police, the entrapment team proceeded to the rendezvous point to receive the delivery of one (1) gram of *shabu* worth Php6,500.00 from accused-appellants. SI2 Dela Cerna, IO2 Orcales, and the confidential informant went to the area by taxi while IO2 Pimentel remained in the service vehicle.<sup>7</sup>

The entrapment team saw the delivery vehicle arrive prompting the confidential informant to approach accused-appellants and tell them that the buyer was waiting inside the taxi. As accused-appellants approached the taxi, SI2 Dela Cerna opened the right rear door while Rodriguez demanded the payment of the *shabu*. SI2 Dela Cerna asked Rodriguez to show him the *shabu* first. Rodriguez conferred with Jabao who gave him a sachet he handed to SI2 Dela Cerna. Upon checking that the sachet contained *shabu*, SI2 Dela Cerna rang up IO2 Pimentel for the pre-arranged "missed call."<sup>8</sup>

When IO2 Orcales alighted from the taxi, SI2 Dela Cerna placed the sachet of suspected *shabu* and his cellphone in his pocket and prepared to arrest accused-appellants. IO2 Orcales held Jabao, while Rodriguez, who

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<sup>4</sup> Records, p. 20.

<sup>5</sup> *Id.* at 22-23.

<sup>6</sup> *Rollo*, pp. 6-7. IOI Pimentel's full name was not in the records.

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

<sup>8</sup> *Id.*

tried to run away, was eventually caught by SI2 Dela Cerna. After making the arrests, SI2 Dela Cerna and IO2 Orcales asked some bystanders to call for a *barangay* official to witness the inventory.<sup>9</sup>

SI2 Dela Cerna prepared the inventory and marked the sachet of suspected *shabu* with "RDC-1 27 December." *Barangay Kagawad* Edgardo S. Tan (*Kagawad* Tan) arrived thereafter. The PDEA operatives contacted a media representative but decided to wait for the latter's arrival at their office instead. At the PDEA office, SI2 Dela Cerna prepared the letter request to the PNP Crime Laboratory while IO2 Pimentel took pictures of accused-appellants.<sup>10</sup> The letter-request and marked specimen were subsequently received by P/SI Charity Peralta Caceres (P/SI Caceres) and PO3 Adlaon<sup>11</sup> of the Regional Crime Laboratory Office of Cagayan de Oro City. A qualitative examination on the submitted specimen – one (1) heat sealed transparent plastic sachet containing white crystalline substance weighing 0.24 gram – yielded positive for the presence of methamphetamine hydrochloride, a dangerous drug.<sup>12</sup>

### Version of the Defense

Accused-appellants denied the charge against them. Jabao claimed he was celebrating with his family at Marvilla Beach when he received a text message from his new friend, Wella, asking if she could join them. Jabao and Rodriguez drove to a gasoline station to fetch Wella but the latter told them to first meet with her cousin, a certain John, who will accompany them to where she was.

While Jabao was on the phone with Wella, a person approached their vehicle and started talking to John. Suddenly, four (4) persons alighted from a taxi and immediately fired their guns. Jabao was shocked while Rodriguez ran away in fear. One of the men told Jabao to keep silent and asked him where the *shabu* was. Accused-appellants alleged that nothing was recovered from them after they were frisked and were threatened to sign a document. They were then brought to a detention cell where they were mauled for two (2) months.<sup>13</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Rollo*, pp. 7, 9-10.

<sup>11</sup> PO3 Adlaon's full name was not disclosed in the records.

<sup>12</sup> *Rollo*, pp. 7, 5-6.

<sup>13</sup> *Id.* at 11-12.

### Ruling of the RTC

In its Judgment dated 23 June 2015, the RTC found accused-appellants guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and sentenced them to suffer the penalty of life imprisonment and pay a fine of Php500,000.00 each.<sup>14</sup> The RTC held that the prosecution sufficiently established all the elements of illegal sale/delivery of dangerous drugs as it was proved that accused-appellants, in conspiracy with each other, delivered one (1) sachet containing metamphetamine hydrochloride to SI2 Dela Cerna during the entrapment operation conducted by the PDEA. Hence, the RTC ruled that the prosecution established the chain of custody, and disregarded accused-appellants' denial of the charge against them.<sup>15</sup>

Aggrieved, accused-appellants appealed to the CA.

### Ruling of the CA

In a Decision dated 08 August 2017, the CA affirmed accused-appellants' conviction. The CA held that Section 5, Article II of RA 9165 punishes not only the sale of prohibited drugs, but likewise, the mere act of delivery, or distribution thereof, as in this case. Despite the non-presence of the required witnesses, the CA held that the integrity and evidentiary value of the seized drug were preserved.<sup>16</sup>

Hence, this appeal.

### Issue

The sole issue in this case is whether or not the CA correctly found accused-appellants guilty beyond reasonable doubt for violating Section 5, Article II of RA 9165.

### Ruling of the Court

The appeal is meritorious.

An appeal in criminal cases leaves the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in

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<sup>14</sup> CA rollo, p. 53.

<sup>15</sup> *Id.* at 50-53.

<sup>16</sup> Rollo, pp. 15-25 and 5.

the appealed judgment, whether or not assigned or unassigned. The appeal vests in the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>17</sup>

In this case, accused-appellants were charged with the crime of delivery of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. For a successful prosecution of the crime of illegal delivery of dangerous drugs, it must be proved that the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; that such delivery is not authorized by law; and that the accused knowingly made the delivery. Delivery may be made even without consideration.<sup>18</sup>

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>19</sup> Chain of custody means the duly recorded authorized movements and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.<sup>20</sup>

The procedure is enshrined in statute, specifically in Section 21 of RA 9165, which states:

(1) The apprehending team having initial custody of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

This is further expanded in the Implementing Rules and Regulations (IRR) of RA 9165 which, in addition to what is already in the law, provides further that –

xxxx [T]he physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; xxx [and] non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and

<sup>17</sup> *Santos v. People*, G.R. No. 232950, 13 August 2018; 877 SCRA 160.

<sup>18</sup> *People v. Jao*, 810 Phil. 1028-1039 (2017); G.R. No. 225634, 07 June 2017, 157 SCRA 157, 156.

<sup>19</sup> *Aranas v. People*, G.R. No. 242315, 03 July 2019.

<sup>20</sup> See Section 1 (b) of Dangerous Drugs Board Resolution No. 1, Series of 2002.

invalid such seizures of and custody over said items.<sup>21</sup>

The witnesses required during the physical inventory and photographing of the items seized are, therefore: (1) the accused or the person from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media; (3) representative from the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.<sup>22</sup>

Parenthetically, Section 21 of RA 9165 was recently amended by RA 10640, which was enacted and took effect in 2014, such that it is no longer required that a representative from both the media AND the DOJ be present; it is sufficient that a representative of either the media OR the National Prosecution Service is present. Since the crime charged against accused-appellants allegedly occurred on 27 December 2009, the original provisions of Section 21 of RA 9165 and its IRR shall be applied.

*The requirements laid down in Section 21, RA 9165 and its Implementing Rules and Regulations were not complied with*

Accused-appellants argue that the PDEA operatives grossly disregarded the mandate of Section 21, RA 9165. They claim that there were serious irregularities in the physical inventory because it was not conducted in the presence of the witnesses required in Section 21 of the said law.

The Court finds merit in the argument and holds that the prosecution failed to comply with the law.

Records show that the marking of the seized sachet was not immediately done at the place of apprehension. In his testimony, SI2 Dela Cerna did not say he immediately marked the item. In *People v. Cuevas*,<sup>23</sup> the Court held that as part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photographing of the seized items be conducted immediately after seizure and confiscation of the same.

<sup>21</sup> Section 21 (a), Implementing Rules and Regulations of RA 9165.

<sup>22</sup> See *People v. Dahil*, 750 Phil. 212, 228 (2015); G.R. No. 212196, 12 January 2015, 745 SCRA 221, 235.

<sup>23</sup> G.R. No. 238906, 05 November 2018.

Case law recognizes that marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.<sup>24</sup> But nowhere in SI2 Dela Cerna's testimony and Joint Affidavit is it stated where and when he made the marking of the sachet allegedly seized from the appellants. The Inventory of the Seized Items/Confiscated Non-Drugs<sup>25</sup> also did not indicate where the allegedly confiscated sachet was marked. Hence, there is no proper marking of the item allegedly recovered from appellants.

More glaring is that the physical inventory of the seized sachet and the subsequent signing of the inventory were not attended by the required witnesses. The testimonies of the PDEA agents are bereft of any statement that they exerted earnest efforts to secure a DOJ representative to witness the physical inventory. There was no media representative during the actual inventory at the place of apprehension. The alleged media representative, a certain Richard Dela Cruz, only went to the PDEA office after the inventory of the seized item was made:

Atty. Ayuban:

Q: He [Dela Cruz] was not at the crime scene when the inventory was made?

IO2 Orcales:

A: No, sir, only the Brgy. Official.<sup>26</sup>

The situation was further exacerbated when *Kagawad* Tan testified that he merely signed the receipt after the inventory was conducted –

Atty. Ricolino L. Ayuban:

Q: When you arrived (sic) at the area, were this PDEA agent were (sic) still listing the items on the document that you have just identified?

Barangay Kagawad Edgardo Tan:

A: No more.

Q: It was already listed when you arrive[d]?

A: Yes.

Q: You were then just requested to sign that document?

A: Yes.<sup>27</sup>

<sup>24</sup> *People v. Mamatumpo*, 767 Phil. 845, 855 (2015), G.R. No. 210452, 26 August 2015, 768 SCRA 342, 351, citing *Imson v. People*, 669 Phil. 262, 270-271 (2011).

<sup>25</sup> Records, p. 15.

<sup>26</sup> TSN dated 16 October 2012, Criminal Case No. 2010-193, p. 22.

<sup>27</sup> TSN dated 04 February 2013, Criminal Case No. 2010-193, pp. 6-7.

Worse, during the pre-trial conference, **both the prosecution and the defense stipulated that “during the arrest or during the operation, no representative from the DOJ, elected government official or media representative were present.”**<sup>28</sup>

Without the insulating presence of the witnesses required by law during the seizure and marking of the seized items, the evils of switching, “planting” or contamination of the evidence that had tainted buy-bust operations in prior years again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu*. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.<sup>29</sup>

Ideally, the presence of the insulating witnesses must be secured not only during the inventory but, more importantly, at the time of the warrantless arrest. It is at this point that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug.<sup>30</sup>

Where any or all of the three insulating witnesses is or are absent, the prosecution must allege and prove the reasons for their absence, and likewise show that earnest efforts were made to secure their attendance.<sup>31</sup> This Court has held in a long string of cases that these witnesses should be present at the time of the inventory because their presence serves both a crucial and a critical purpose.<sup>32</sup>

Since the required witnesses were not present during the inventory, and the presence of the elected official was secured only thereafter by the PDEA agents, there is doubt whether the drugs taken from the appellants were the same drugs presented in court.

*The prosecution failed to give a justifiable ground for non-compliance of Section 21, RA 9165*

<sup>28</sup> Records, p. 25.

<sup>29</sup> *People v. Mendoza*, 736 Phil. 749-771 (2014); G.R. No. 192432, 23 June 2014, 727 SCRA 113, 129.

<sup>30</sup> *People v. Tomawis*, G.R. No. 228890, 18 April 2018, cited in *People v. Fatallo*, G.R. 218805, 07 November 2018; 862 SCRA 131, 150.

<sup>31</sup> *People v. Lim*, G.R. No. 231989, 04 September 2018.

<sup>32</sup> *People v. Manansala*, G.R. No. 229509, 03 July 2019; *People v. Mendoza*, G.R. No. 192432, 23 June 2014, 736 Phil 749, 761 (2014); *People v. Tomawis*, *supra* at note 30; *People v. Callejo*, G.R. No. 227427, 06 June 2018; *People v. Pagsigan*, G.R. No. 232487, 03 September 2018; *Mapandi v. People*, G.R. No. 200075, 04 April 2018; *Ramos v. People*, G.R. No. 233572, 30 July 2018; *People v. Lumudag*, G.R. No. 201478, 23 August 2017.

Section 21 (a) of the IRR of RA 9165 states that noncompliance with the requirements stated thereunder, shall not render void and invalid such seizures of and custody over said items for as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

This exception to the general rule, however, applies only: (1) where the prosecution recognized the procedural lapses and thereafter explained the cited justifiable grounds; and

(2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving – with moral certainty – that the illegal drug presented in court is the same drug confiscated from accused during his arrest.<sup>33</sup>

The failure to follow the procedure mandated under RA 9165 and its IRR must be adequately explained. The justifiable ground for non-compliance must be proved as a fact. The court cannot presume what these grounds are or that they even exist.<sup>34</sup>

The prosecution must show that earnest efforts were made to contact the witnesses mandated by law to be present, for “a sheer statement that representatives were unavailable – without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances – is to be regarded as a flimsy excuse.”<sup>35</sup>

In this case, the exception clause in Section 21 (a) of the IRR of RA 9165 finds no application because the prosecution failed to provide a justifiable reason for non-compliance with the procedures mandated in Section 21 of RA 9165.

Where there was non-compliance with the mandated procedures, and the prosecution fails to allege and prove justifiable grounds for such non-compliance, the net effect is as if the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of accused.<sup>36</sup>

**WHEREFORE**, the appeal is hereby **GRANTED** and the Decision

<sup>33</sup> *People v. Carlit*, G.R. No. 227309, 16 August 2017, citing *People v. Cayas*, G.R. No. 206888, 04 July 2016; 789 Phil. 70, 80 (2016).

<sup>34</sup> *People v. De Guzman*, G.R. No. 186498, 26 March 2010; 630 Phil. 637 (2010).

<sup>35</sup> *People v. Umipang*, G.R. No. 190321, 25 April 2012; 686 Phil. 1024, 1052 (2012), cited in *People v. Ramos*, G.R. No. 233744, 28 February 2018.

<sup>36</sup> *People v. Dahil*, G.R. No. 212196, 12 January 2015; 750 Phil. 212 (2015); 745 SCRA 221, 248 citing *People v. Garcia*, G.R. No. 173480, 25 February 2009; 599 Phil. 416, 426-427 (2009).

dated 08 August 2017 of the Court of Appeals in CA-G.R. CR HC No. 01435-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants **REYNALDO M. JABAO AND MICHAEL T. RODRIGUEZ** are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They are **ORDERED IMMEDIATELY RELEASED** from detention, unless detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

**SO ORDERED.”**

Very truly yours,

*Misael DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court *10/15/2020*

Regional Special & Appealed Cases Unit  
PUBLIC ATTORNEY'S OFFICE  
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Tiano Brothers cor. San Agustin Sts.  
9000 Cagayan de Oro City

COURT OF APPEALS  
CA G.R. CR HC No. 01435-MIN  
9000 Cagayan de Oro City

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
Legaspi Village, 1229 Makati City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 40, 9000 Cagayan de Oro City  
(Crim. Case No. 2010-193)

The Director General  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Superintendent  
DAVAO PRISON & PENAL FARM  
B.E. Dujali, 8105 Davao del Norte

Messrs. Reynaldo Jabao &  
Michael Rodriguez  
c/o The Superintendent  
DAVAO PRISON & PENAL FARM  
B.E. Dujali, 8105 Davao del Norte

The Director General  
PHILIPPINE NATIONAL POLICE  
National Headquarters  
Camp Crame, Quezon City

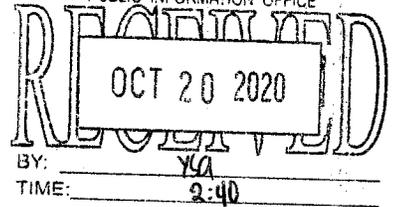
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Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

**G.R. No. 234953**

-versus-

REYNALDO M. JABAO and  
MICHAEL T. RODRIGUEZ,  
Accused-Appellants.

x-----/

**ORDER OF RELEASE**

**TO: The Director**  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

**Thru: The Superintendent**  
DAVAO PRISON & PENAL FARM  
B.E. Dujali, 8105 Davao del Norte

**GREETINGS:**

WHEREAS, the Supreme Court on January 22, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

“WHEREFORE, the appeal is hereby **GRANTED** and the Decision dated 08 August 2017 of the Court of Appeals in CA-G.R. CR HC No. 01435-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants **REYNALDO M. JABAO AND MICHAEL T. RODRIGUEZ** are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They are **ORDERED IMMEDIATELY RELEASED** from detention, unless detained for any other lawful cause. *MA*

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

**SO ORDERED.”**

**NOW, THEREFORE,** You are hereby ordered to immediately release **REYNALDO M. JABAO AND MICHAEL T. RODRIGUEZ** unless there are other lawful causes for which they should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

**GIVEN** by the Honorable **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **22<sup>nd</sup>** day of **January 2020**.

Very truly yours,

*Misael D C Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court

*10/15/2020*

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c/o The Superintendent  
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G.R. No. 234953 *MA*