



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **February 15, 2022** which reads as follows:*

“G.R. No. 257046 (People of the Philippines v. Al Caparros Argosino, Michael B. Robles, and Wenceslao A. Sombero, Jr.). — On June 25, 2021, the Sandiganbayan issued a Decision¹ convicting accused-appellants Al Caparros Argosino (Argosino), Michael B. Robles (Robles), Wenceslao A. Sombero Jr. (Sombero, Jr.) (referred to as accused-appellants/movants) of Plunder² and of Violation of Section 3(e) of Republic Act (RA) No. 3019.³ They were each sentenced to suffer *reclusion perpetua* for Plunder and the penalty of imprisonment of six (6) years, and one (1) month as minimum, to ten (10) years as maximum, for RA No. 3019 with perpetual disqualification to hold public office. During the promulgation of judgment, accused-appellants/movants requested that they be allowed to remain in detention at the Metro Manila District Jail at Camp Bagong Diwa (MMDJ), Taguig City⁴ until their appeals are decided

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¹ *Rollo*, pp. 24-296. Penned by Associate Justice Sarah Jane T. Fernandez, with the concurrence of Associate Justices Karl B. Miranda and Zaldy V. Trepeses.

² RA No. 7080, entitled “AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER,” approved on July 12, 1991.

³ Entitled “ANTI-GRAFT AND CORRUPT PRACTICES ACT,” approved on August 17, 1960.

SEC. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

⁴ At the time of the filing of the instant motions, accused-appellants/movants remain detained at the MMDJ, Annex 4 Building, Bureau of Jail Management and Penology (BJMP), Camp Bagong Diwa, Taguig City.

with finality. The prosecution opposed the motion. On July 9, 2021, the Sandiganbayan ruled that accused-appellants/movants are national prisoners because their maximum prison terms consist of forty (40) years and ten (10) years.⁵ The Sandiganbayan denied their motions and promptly issued an Order of commitment Pending Appeal,⁶ for their transfer to the New Bilibid Prison (NBP), in Muntinlupa City.

As an incident to accused-appellants/movants present appeal before the Court, Sombero, Jr. filed an *Urgent Motion for Continued Detention at MMDJ Annex 4, Camp Bagong Diwa, Taguig City, Due to Covid-19 with Application for Issuance of a Status Quo Ante Order or Temporary Restraining Order*,⁷ while Argosino and Robles filed a *Joint Urgent Motion for Continued Temporary Detention at MMDJ-Annex 4 of BJMP in Camp Bagong Diwa, Taguig City on Account of Compassionate and Humanitarian Consideration Due to Covid-19 Pandemic*.⁸ They ask the Court to issue a special order suspending their transfer to the national penitentiary, citing the surge of the Covid-19 “Delta” variant as reason, along with their health conditions which allegedly make them more susceptible to the lethal effects of the Covid-19 virus. They invoke humanitarian and compassionate considerations.

The Court **denies** the motions.

Accused-appellants/movants were sentenced by the Sandiganbayan to prison terms exceeding three (3) years, hence, are considered as national prisoners or as national inmates defined under Presidential Decree No. 29⁹ and Section 3(t) of the Revised Implementing Rules and Regulations (IRR)¹⁰ of RA No. 10575 or “*The Bureau of Corrections Act of 2013*,” thus:

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⁵ *Rollo*, pp. 373-375, Sandiganbayan’s Minutes of the proceedings held on July 9, 2021.

⁶ *Id.* at 377-378.

⁷ *Id.* at 302-314.

⁸ *Id.* at 357-372.

⁹ Entitled “AMENDING SUBPARAGRAPH (D) OF SECTION SEVENTEEN HUNDRED THIRTY-NINE AND SUBPARAGRAPH (B) OF SECTION SEVENTEEN HUNDRED FORTY OF THE REVISED ADMINISTRATIVE CODE,” dated October 25, 1972. Under the amendment, considered municipal prisoners are:

(d) Persons who by reason of their sentence may be deprived of liberty for not more than six months. The imposition of subsidiary imprisonment shall not be taken into consideration in fixing the status of a prisoner hereunder except when the sentence imposes a fine only.

and considered provincial prisoners are:

(b) Persons who by reason of their sentence may be deprived of liberty for not more than three years or are subjected to a fine of not more than one thousand pesos, or are subjected to both penalties; but if a prisoner receives two or more sentences in the aggregate exceeding the period of three years, he shall not be considered a provincial prisoner. The imposition of subsidiary imprisonment shall not be taken into consideration in fixing the status of a prisoner hereunder except when the sentence imposes a fine only.

Prisoners who are neither municipal nor provincial prisoners shall be considered national prisoners.

¹⁰ Issued on May 23, 2016.

t) *National Inmate* — refers to an inmate **sentenced by a court to serve a term of imprisonment for more than three years** or to a fine of more than one thousand pesos; or regardless of the length of sentence imposed by the court, to one sentenced for violation of customs law or other laws within the jurisdiction of the Bureau of Customs or enforceable by it; or for violation of immigration and election laws; or to one **sentenced to serve two or more prison sentences in the aggregate exceeding the period of three years, whether or not he has appealed**. It shall also include a person committed to the Bureau of Corrections by a court or competent authority for temporary confinement for similar purpose. (Emphases supplied.)

Being national prisoners, the Sandiganbayan was correct in ordering the transfer of accused-appellants from the MMDJ, a local jail, to the NBP in Muntinlupa City, which is the national penitentiary¹¹ managed by the Bureau of Corrections (BuCor).¹² As held in *Obugan v. People*¹³ and *Basilonia v. Judge Villaruz*,¹⁴ if the penalty imposed requires the service of sentence in the National Penitentiary and the convicted accused is already under detention, the trial court should **immediately order the transfer of national prisoners to the NBP**. This ministerial duty of issuing the *mittimus* or commitment order must be accomplished despite the filing of a notice of appeal,¹⁵ as stated in Circular No. 4-92-A issued by the Court on April 20, 1992.¹⁶ The non-compliance with the

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¹¹ There are a total of seven (7) national penal colonies presently under the control and supervision of the Bureau of Corrections. National prisoners may be transferred or committed to the NBP in Muntinlupa City, Metro Manila; the Davao Prison and Penal Farm in Panabo, Davao del Norte (for national prisoners in Regions X and XI); San Ramon Prison and Penal Farm in Zamboanga City, Zamboanga del Sur (for national prisoners in Regions IX and XII); Leyte Regional Prison in Abuyog, Leyte (for national prisoners in Region VIII); Iwahig Prison and Penal Farm in Puerto Princesa, Palawan (for national prisoners in Palawan and Puerto Princesa City); Sablayan Prison and Penal Farm in Sablayan, Mindoro (for national prisoners in Mindoro Oriental and Mindoro Occidental); and Correctional Institution for Women (CIW) in Mandaluyong City, Metro Manila (for female national prisoners). See *A.M. No. 15-08-07-SC, dated April 5, 2016, Notice, Re: x x x Requesting the Transfer of Venue of Pending Case/s Wherein the Accused is Currently Detained at the National Penitentiary by Virtue of Conviction in Another Case*.

¹² Section 4 of RA 10575 or “The Bureau of Corrections Act of 2013” states that: “The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.”

¹³ 314 Phil. 119, 128-129 (1995).

¹⁴ 766 Phil. 1, 18-19 (2015).

¹⁵ *Id.* See also *People v. Ibasan, Sr.*, 214 Phil. 611, 630 (1984).

¹⁶ Subject: TRANSFER OF NATIONAL PRISONERS TO THE BUREAU OF CORRECTIONS IN MUNTINLUPA, METRO MANILA. See also *OCA Circular No. 40-2013*, dated March 13, 2013, directing judges of lower courts to issue appropriate document required for the transfer of insular inmates such as *mittimus* or commitment order, decision, certificate of non-appeal or notice of appeal, certificate of non-pending case, certificate of detention and detainee’s manifestation.

Circular calls for an administrative sanction as held in *Atty. Adalim-White v. Judge Bugtas*,¹⁷ wherein the judge was fined for gross ignorance of law and procedure for granting bail to an accused after conviction and for his failure to issue forthwith the *mittimus* to commit the accused, who is a national prisoner, to the NBP.

As jurisprudence instructs, only in specific, extraordinary cases, can the court suspend the transfer of a convicted accused to the proper jail facility.¹⁸ In this case, Sombero, Jr. alleges that he is 65 years old and suffers from a host of ailments: coronary artery disease, cardiac dysrhythmia, sick sinus syndrome, severe sleep apnea, exogenous obesity, and type 2 diabetes mellitus. His age and medical condition render him more vulnerable to develop critical illness, or death should he get infected with Covid-19 since he has not been vaccinated. He submits that he is less likely to contract Covid-19 if he stays at the Covid-free MMDJ facility, instead of being confined at the NBP which have had hundreds of inmates infected with the virus.¹⁹ This argument was echoed in the joint motion of Argosino, who claims to have hypertension and diabetes; and Robles, who is said to be diagnosed with cardiac dysrhythmia hypertension and hyperthyroidism. Argosino and Robles added that while it is ministerial for the Sandiganbayan to issue a *mittimus* for their commitment to the NBP, as stated in the Court's Circular and in *Basilonia v. Judge Villaruz*,²⁰ this policy must be revisited because of the new strains of Covid-19. They assert that the ruling in *Enrile v. Sandiganbayan*²¹ should be applied to their cases on humanitarian grounds, and for the Court to consider the Covid-19 pandemic as the special and compelling circumstance in granting their prayer to suspend their transfer to the NBP.²²

We are not persuaded.

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¹⁷ 511 Phil. 615 (2005).

¹⁸ See *Basilonia v. Judge Villaruz*, *supra* note 14, at 15-17.

¹⁹ *Rollo*, pp. 302-314, Sombero's *Urgent Motion for Continued Detention at MMDJ Annex 4, Camp Bagong Diwa, Taguig City, Due to Covid-19 with Application for Issuance of a Status Quo Ante Order or Temporary Restraining Order*.

²⁰ *Supra* note 14.

²¹ 767 Phil. 147 (2015).

²² *Rollo*, pp. 357-372, Argosino and Robles' *Joint Urgent Motion for Continued Detention at MMDJ-Annex 4 of BJMP in Camp Bagong Diwa, Taguig City on Account of Compassionate and Humanitarian Consideration Due to Covid-19 Pandemic*.

Unlike in *Enrile*, accused-appellants/movants in these cases are not mere detainees asking to be released on bail pending trial. They are national prisoners, who, upon conviction of violation of RA No. 3019 and Plunder, are no longer presumed innocent.²³ Moreover, their allegations pertaining to their health conditions, and the documents showing the medical findings of their doctors, are questions of fact which are not within the province of the Court to determine.²⁴ Neither can the Court take judicial notice of their medical conditions.²⁵

As for the overcrowding of inmates in the NBP, the Court understands that this situation increases the risk of contracting Covid-19, or any viral disease. Nevertheless, this predicament is not peculiar to accused-appellants/movants because regardless of age or health condition, all inmates are vulnerable to Covid-19 because of the congestion in prison cells. This institutional problem must be addressed. However, the condition is not sufficient for the Court to grant the relief sought by them on purely equitable grounds.

Indeed, the Court issued Office of The Court Administrator (OCA) Circular No. 125-2020²⁶ on July 29, 2020, suspending the issuance of commitment orders for the transfer of persons deprived of liberty from the BJMP to BuCor to prevent the spread of Covid-19 among inmates. The suspension was effective until August 31, 2020, and later extended until September 30, 2020, through OCA Circular No. 149-2020.²⁷ After that, no further suspension was issued by the Court.

Notably, what prompted the Court to issue OCA Circular Nos. 125-2020 and 149-2020 was the unprecedented surge in Covid-19 infections during the first year of the global pandemic. In fact, it was Undersecretary Gerald Q. Bantag, Director General of the BuCor, who requested the Court to issue these circulars. Of course, the BuCor is in the best position to know the situation in the National Penitentiary, being the forefront agency in charge of managing and

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²³ See *Leviste v. Court of Appeals*, 629 Phil. 587, 608 (2010).

²⁴ *People v. Napoles*, G.R. No. 247611 (Resolution), January 13, 2021.

²⁵ *Id.*

²⁶ Entitled "SUSPENSION OF THE COMMITMENT ORDERS FOR THE TRANSFER OF PERSONS DEPRIVED OF LIBERTY (PDLS) FROM THE JAIL FACILITIES OF THE BUREAU OF CORRECTIONS."

²⁷ Entitled "SUSPENSION OF COMMITMENT ORDERS FOR THE TRANSFER OF PERSONS DEPRIVED OF LIBERTY TO THE DIFFERENT JAIL FACILITIES," dated September 1, 2020.

supervising the jail facility. If the BuCor deemed it necessary to request anew for the suspension of the transfer of inmates to the NBP due to the “Delta” variant of Covid-19, it should have done so, yet no such request was made to date.

As of this writing, the Department of Health (DOH) has recorded a downward trend in the number of Covid-19 cases in the country. On December 19, 2021, the DOH confirmed only an additional 203 new cases with a daily positivity rate of just 0.8%.²⁸ Further, Undersecretary Maria Rosario Vergeire of the DOH stated²⁹ that the Philippines is now under minimal risk classification following the continuous decrease in the daily reported cases of Covid-19. The country has netted a negative two-week growth rate of -51% and low average daily attack rate of 0.32% from December 7-20, 2021.³⁰

More encouragingly, the country has ramped up its vaccination efforts in the general population following the arrival of vaccines purchased and donated from abroad. Even within the confines of the BuCor facilities, 91.78% of the total inmate population or 44,589 out of 48,537 PDLs have received a jab against Covid-19.³¹ Reports show that 19,678 inmates already completed their doses, while 24,911 are waiting for their second doses.³² Data from the Department of Justice also showed that the vaccination rate rose at the New Bilibid Prison which houses 28,516 inmates. There are 10,529 inmates tagged as fully vaccinated and 17,000 others who are waiting for their second jab.³³

On account of the positive developments in the country’s battle against Covid-19, charting towards “herd immunity”³⁴ – this Court finds no compelling reason to suspend the transfer of accused-appellants to the National Penitentiary.

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²⁸ “COVID-19 Tracker,” last accessed on December 20, 2021, from <https://doh.gov.ph/covid19tracker>.

²⁹ In an official press briefing dated December 20, 2021.

³⁰ *Supra* note 28.

³¹ “40% of BuCor’s 48.5K inmates fully vaccinated,” last accessed on December 20, 2021 from <https://www.philstar.com/headlines/2021/12/20/2149077/40-bucors-485k-inmates-fully-vaccinated> citing data from the DOJ.

³² *Id.*

³³ *Id.*

³⁴ The World Health Organization (WHO) defines “Herd immunity,” also known as ‘population immunity’, as the indirect protection from an infectious disease that happens when a population is immune either through vaccination or immunity developed through previous infection. WHO supports achieving ‘herd immunity’ through vaccination, not by allowing a disease to spread through any segment of the population, as this would result in unnecessary cases and deaths. (See <https://www.who.int/news-room/questions-and-answers/item/herd-immunity-lockdowns-and-covid-19#:~:text=What%20is%herd%20immunity%3Fimmunity%20developed%20through%20previous%20infection>). Last accessed on December 20, 2021).

The Covid-19 virus has challenged the way systems and the society at large operate on a day-to-day basis—unsparing, of course, the justice system. Although the Court has acknowledged in its administrative circulars the health hazards marring places of congregation, this alone do not justify the granting of accused-appellants prayer for their continued stay at the MMDJ-Annex 4 in Taguig City as an alternative place of confinement and for the suspension of their transfer to the NBP. As we have explained in *People v. Napoles*,³⁵ statutory rules are not supplanted by the existence of a pandemic and may only be suspended on exceptional and compelling considerations. The Court finds none in this case. The reality is, Covid-19 will pose the same level of hazard to accused-appellants, to people of all ages, whether inside or outside the National Penitentiary.

FOR THESE REASONS, the Urgent Motion for Continued Detention at MMDJ Annex 4, Camp Bagong Diwa, Taguig City, Due to Covid-19 with Application for Issuance of a *Status Quo Ante* Order or Temporary Restraining Order filed by accused-appellant Wenceslao A. Sombero, Jr., and the Joint Urgent Motion for Continued Temporary Detention at MMDJ-Annex 4 of BJMP in Camp Bagong Diwa, Taguig City on Account of Compassionate and Humanitarian Consideration Due to Covid-19 Pandemic filed by accused-appellants Al Caparros Argosino and Michael B. Robles, are hereby **DENIED**.

The records forwarded by the Sandiganbayan, Sixth (6th) Division consisting of: (a) 27 original records of the cases in SB-18-CRM-0240-0243; (b) four (4) long expandable envelopes; and (c) twelve (12) expandable envelopes of transcript of stenographic notes, in compliance with its Resolution dated July 9, 2021 which approved and gave due course to the notice of appeal filed by accused-appellants Al Caparros Argosino, Wenceslao A. Sombero, Jr., and Michael B. Robles, from its Decision dated June 25, 2021 in Criminal Case Nos. SB-18-CRM-0240 and SB-18-CRM-0241, pursuant to Rule XI, Section 1 (a), of A.M. No. 13-7-05-SB, 2018 Revised Internal Rules of the Sandiganbayan, and directed the Division Clerk of Court, Sandiganbayan, 6th Division, to transmit the records of the cases to the Supreme Court; and the manifestation of the personal service on the Office of the Special Prosecutor and the Bureau of Jail Management and Penology, filed by Atty. Jesi Howard S. Lanete of

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³⁵ *Supra* note 24.

Flaminiano Arroyo and Dueñas, counsel for accused-appellant Wenceslao A. Sombero, Jr., are both **NOTED**; and the parties are hereby required to **FILE** their respective supplemental briefs, if they so desire, within thirty (30) days from notice.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA

Division Clerk of Court *4/22*

by:

MARIA TERESA B. SIBULO

Deputy Division Clerk of Court

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AUG 17 2022

OFFICE OF THE SPECIAL
PROSECUTOR
4th Floor, Ombudsman Building
Agham Road, Diliman
1101 Quezon City

RIVERA SANTOS & MARANAN
Counsel for Resp. M. Robles
Unit 2902-D West Tower
Philippine Stock Exchange Centre
Exchange Road, Ortigas Center
1605 Pasig City

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Supreme Court

Judgment Division (x)
Supreme Court

SANDIGANBAYAN
Centennial Building
Commonwealth Avenue
1126 Quezon City
(SB-18-CRM-0240 to 0243)

6thdiv.sb@judiciary.gov.ph
sbjrd2020@gmail.com

Atty. Jesi Howard S. Lanete
FLAMINIANO ARROYO & DUEÑAS
Counsel for Resp. W. Sombero, Jr.
Unit 1002, One Corporate Center
Meralco cor. Doña Julia Vargas Avenues
Ortigas Center, 1605 Pasig City

CASTILLO & ASSOCIATES
Counsel for Resp. A. Argosino
Unit 1105, 11th Floor, Prestige Tower
Condominium, F. Ortigas, Jr. Road
Ortigas Center, 1605 Pasig City

DAVID BUENAVENTURA & ANG
LAW OFFICES
Collaborating Counsel for Resp.
A. Argosino
1785 SLD Building, E. Rodriguez Sr.
Avenue, Brgy. Pinagkaisahan
1111 Quezon City

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NAF

