



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **February 15, 2023** which reads as follows:*

**“G.R. No. 250152 (DARIO ZABALA, JR., Petitioner v. PEOPLE OF THE PHILIPPINES, Respondent).** – In ascertaining whether an accused is qualified to apply for probation, the proper basis should be the offense that the accused is found guilty of, not the offense charged.

This Court resolves the Petition for Review on *Certiorari*<sup>1</sup> filed by Dario Zabala, Jr. (Zabala), assailing two Resolutions<sup>2</sup> of the Court of Appeals which upheld the Orders<sup>3</sup> of the Regional Trial Court declaring Zabala ineligible to apply for probation.

On March 13, 2019,<sup>4</sup> Zabala was charged with violations of Sections 5 and 11 of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, as amended.

The Informations against him read:

For Criminal Case No. 19558  
(Violation of Section 5, Article II of R.A. No. 9165)

That on or about March 11, 2019, in Samal, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being authorized by law, did then and there willfully sell, distribute and give-away to another **ONE (1)** heat-sealed transparent plastic sachet containing

<sup>1</sup> *Rollo*, pp. 16–40

<sup>2</sup> *Id.* at 45–49 & 51–52. The June 25, 2019 Resolution in CA-G.R. SP No. 161128 was penned by Associate Justice Ruben Reynaldo G. Roxas with the concurrence of Associate Justices Marlene Gonzales-Sison and Victoria Isabel A. Paredes of the Twelfth Division, Court of Appeals, Manila. The October 16, 2019 Resolution in the same case was penned by Associate Justice Ruben Reynaldo G. Roxas with the concurrence of Associate Justices Marlene Gonzales-Sison and Victoria Isabel A. Paredes of the Former Twelfth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 75–80, 85–86. The two March 29, 2019 Orders in Criminal Case Nos. 19558 and 19559, and the April 12, 2019 Order in Criminal Case No. 19558 were all penned by Judge Angelito I. Balderama of Branch 1, Regional Trial Court of Balanga City, Bataan.

<sup>4</sup> *Id.* at 81–84.

Methamphetamine Hydrochloride commonly known as 'shabu' weighing **ZERO POINT ONE FOUR FOUR (0.144) GRAM**, a dangerous drug.

CONTRARY TO LAW.

For Criminal Case No. 19559  
(Violation of Section 11, Article II of R.A. No. 9165)

That on or about March 11, 2019, in Samal, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being authorized by law, did then and there willfully, unlawfully and feloniously has in his possession, custody and control **TWO (2)** heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride commonly known as 'shabu' with a total weight of **ZERO POINT ONE SEVEN ZERO (0.170) GRAM**, a dangerous drug.

CONTRARY TO LAW.<sup>5</sup> (Emphasis in the original)

Zabala, through counsel, expressed his intent to plea bargain in both charges by pleading guilty under Section 12, or illegal possession of drug paraphernalia, instead of Sections 5 and 11, or illegal sale and illegal possession of dangerous drugs, respectively.<sup>6</sup>

The public prosecutor agreed to plea bargain on the illegal possession case. Thus, upon arraignment, Zabala entered a plea of guilty.<sup>7</sup>

However, the public prosecutor objected to the plea bargain for the illegal sale case, citing the June 26, 2018 Department Circular No. 027 of the Department of Justice, or the Amended Guidelines on Plea Bargaining for Republic Act No. 9165.<sup>8</sup>

The trial court granted Zabala's plea bargain in the illegal sale case but stated that he was ineligible to apply for probation.<sup>9</sup>

The dispositive portion of the trial court's March 29, 2019 Order in the illegal sale case reads:

WHEREFORE, finding accused Dario Zabala, Jr. guilty beyond reasonable doubt to the lesser offense penalized under Sec. 12[,] Art. 2 of RA 9165, he is hereby sentenced to an indeterminate penalty of imprisonment ranging from **six (6) months and one (1) day as minimum, to three (3) years as maximum** and to pay a fine of **Ten Thousand Pesos (P10,000.00)** with subsidiary imprisonment in case of insolvency.

<sup>5</sup> *Id.* at 18.

<sup>6</sup> *Id.* at 18–19. Henceforth, Criminal Case No. 19559 will be referred to as the “illegal possession case” and Criminal Case No. 19558 will be referred to as the “illegal sale case.”

<sup>7</sup> *Id.* at 18.

<sup>8</sup> *Id.* at 19.

<sup>9</sup> *Id.* at 75–77.

....

Make it of record that accused is ineligible to apply for probation in this case. Make it of record that accused voluntarily entered a plea of guilty to a lesser offense punished under Section 12 hereof without being forced, coerced and said was done out of his own volition.

Pros. Saldana, Atty. Sierra and accused Dario Zabala, Jr. are notified of this Order in open court.

SO ORDERED.<sup>10</sup> (Emphasis in the original)

On the same day, the trial court also issued an Order for the illegal possession case, which reads:

WHEREFORE, finding accused Dario Zabala, Jr. guilty beyond reasonable doubt, he is hereby sentenced to an indeterminate penalty of imprisonment ranging **from six (6) months and one (1) day as minimum, to two (2) years as maximum** and to pay a fine of **Ten Thousand Pesos (P10,000.00)** with subsidiary imprisonment in case of insolvency.

Pros. Saldana, Atty. Sierra and accused Dario Zabala, Jr. are notified of this Order in open Court.

SO ORDERED.<sup>11</sup> (Emphasis in the original)

On April 1, 2019, Zabala applied for probation in the illegal possession case<sup>12</sup> while he filed a Motion for Reconsideration to Allow Accused to Apply for Probation in the illegal sale case.<sup>13</sup> No opposition was filed by the public prosecutor.<sup>14</sup>

In an April 12, 2019 Order,<sup>15</sup> the trial court denied the Motion for Reconsideration to Allow Accused to Apply for Probation.

Zabala then filed a Petition for *Certiorari*<sup>16</sup> before the Court of Appeals, but this was dismissed on June 25, 2019.<sup>17</sup> The Court of Appeals held that Zabala should have filed a petition for review directly before this Court, considering that the issues raised were pure questions of law.<sup>18</sup>

The Court of Appeals held that:

<sup>10</sup> *Id.* at 76-77.

<sup>11</sup> *Id.* at 85-86.

<sup>12</sup> *Id.* at 87-88.

<sup>13</sup> *Id.* at 90-94.

<sup>14</sup> *Id.* at 21.

<sup>15</sup> *Id.* at 78-80.

<sup>16</sup> *Id.* at 53-74.

<sup>17</sup> *Id.* at 45-49.

<sup>18</sup> *Id.* at 47.

To reiterate, petitioner is merely challenging the trial court's interpretation of the law, thereby posing a question of law. The grounds raised by the petitioner clearly does (sic) not involve a review of the facts and rest solely on what the law provides on a given set of circumstance[s].

In view of the foregoing, the instant petition is **DISMISSED**.<sup>19</sup> (Emphasis in the original)

Zabala moved for reconsideration, but the Court of Appeals denied this in an October 16, 2019 Resolution.<sup>20</sup> Thus, he filed the Petition for Review on *Certiorari* before this Court.<sup>21</sup>

Petitioner argues that the Court of Appeals erred in dismissing his Petition for *Certiorari* because the issues raised were not pure questions of law. He claims that he raised "several acts constitutive of the trial court's manifest grave abuse of discretion"<sup>22</sup> in his Petition, specifically:

- (a) the trial court ruled that the petitioner is not qualified for probation despite the clear provision of Section 24 of Republic Act No. 9165 and that only those who are convicted for drug trafficking and pushing will be ineligible for probation;
- (b) the trial court's unfounded reliance on paragraph 2, Section 2, Rule 116 of the Rules of Court in determining whether the petitioner is eligible for probation; and
- (c) when the trial court outrightly declared that the petitioner is ineligible for probation despite the fact that he possessed all the qualifications and none of the disqualifications under Sections 1 and 2 of Republic Act No. 10707. The trial court did not even conduct any hearing to determine whether the petitioner is eligible for probation, which is a blatant disregard of the petitioner's right to due process and is tantamount to public respondent's arbitrariness and manifest partiality in denying the petitioner's Motion for Reconsideration to allow him to apply for probation.<sup>23</sup>

Petitioner also argues that the trial court committed grave abuse of discretion in denying his Motion for Reconsideration since he had no disqualifications under the law.<sup>24</sup>

Petitioner points out that he filed a Motion for Reconsideration to Allow Accused to Apply for Probation three days after he was sentenced to a

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<sup>19</sup> *Id.* at 48.

<sup>20</sup> *Id.* at 51-52.

<sup>21</sup> *Id.* at 16-40. The Petition for Review was filed on December 20, 2019.

<sup>22</sup> *Id.* at 25.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 33.

probationable penalty of six months and one day to three years of imprisonment and one day to three years of imprisonment and a fine of ₱10,000.00.<sup>25</sup> In addition, petitioner emphasizes that he did not appeal his conviction.<sup>26</sup>

Further, petitioner claims that he has not been convicted of any other offense prior to the institution of the illegal sale and illegal possession cases.<sup>27</sup>

Petitioner thus prays for the reversal of the Resolutions of the Court of Appeals, and that he be allowed to apply for probation.<sup>28</sup>

On June 15, 2020, this Court required the Office of the Solicitor General, on behalf of respondent, to file its comment.<sup>29</sup> Respondent filed its Comment on December 14, 2020.<sup>30</sup>

Respondent argues that the Court of Appeals properly dismissed the Petition for *Certiorari* because petitioner raised pure questions of law.<sup>31</sup>

In addition, respondent argues that petitioner is not qualified for probation because Section 24 of Republic Act No. 9165 states that a person convicted of drug trafficking or pushing cannot avail of the privilege granted by the Probation Law.<sup>32</sup>

Respondent also points out that A.M. No. 18-03-16-SC<sup>33</sup> “uses the word punishable and not convicted.”<sup>34</sup>

Respondent cites *Estipona, Jr. v. Lobrigo*,<sup>35</sup> which held that:

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.<sup>36</sup>

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<sup>25</sup> *Id.* at 35.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 37.

<sup>29</sup> *Id.* at 103.

<sup>30</sup> *Id.* at 130–144.

<sup>31</sup> *Id.* at 134–137.

<sup>32</sup> *Id.* at 138.

<sup>33</sup> Adoption of the Plea Bargaining Framework in Drugs Cases, April 10, 2018.

<sup>34</sup> *Rollo*, p. 138.

<sup>35</sup> 816 Phil. 789 (2017) [Per J. Peralta, *En Banc*].

<sup>36</sup> *Rollo*, p. 139.

Respondent argues that the trial court convicted petitioner of violation of Section 5, and not the lesser offense under Section 12 of Republic Act No. 9165, since the public prosecutor did not consent to petitioner's plea bargain. Thus, petitioner is not eligible for probation.<sup>37</sup>

Hence, respondent asserts that even assuming that petitioner is qualified to apply for probation, he is not automatically entitled to it.<sup>38</sup> The trial court has the duty to determine whether petitioner can be granted probation using the criteria provided under Section 8 of Presidential Decree No. 968 or the Probation Law of 1976, as amended.<sup>39</sup>

Respondent then highlights Section 8(c), which states that "probation will depreciate the seriousness of the offense committed," emphasizing that petitioner was originally charged with violation of sale of illegal drugs. To grant petitioner probation would "not only depreciate the seriousness of the offense, but [would also run] counter to the government's intensified campaign to curb the proliferation of illegal drugs."<sup>40</sup>

The issues for this Court's resolution are:

first, whether the Court of Appeals erred in dismissing petitioner Dario Zabala, Jr.'s Petition for *Certiorari*;

second, whether the trial court erred in denying petitioner Dario Zabala, Jr.'s Motion for Reconsideration to Allow Accused to Apply for Probation; and

lastly, whether petitioner Dario Zabala, Jr. is eligible to apply for probation.

This Court partially grants the Petition. The Court of Appeals erred in dismissing petitioner's Petition for *Certiorari* and the trial court committed grave abuse of discretion when it approved the plea bargain despite objection from the prosecution, sentenced petitioner, and declared him ineligible for probation.

The trial court's April 12, 2019 Decision partly states:

A peculiar circumstance obtaining in this case is that the accused here pleaded guilty and he was sentenced to a penalty for the lesser offense

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<sup>37</sup> *Id.* at 140.

<sup>38</sup> *Id.* at 141.

<sup>39</sup> *Id.* at 141-142.

<sup>40</sup> *Id.* at 142

punished by Section 12, Article II of R.A. No. 9165 pursuant to the plea bargaining framework set forth by the Supreme Court hereof. Technically, accused here was never convicted for violation of Section 12 hereof but for violation of Sec. 5, although his sentence corresponds to the penalty imposed by Section 12 pursuant to A.M. No. 18-03-16-SC. It has to be stressed in this connection, that the Information filed against the accused for violation of Section 5 was never abandoned when accused pleaded guilty whereby he was sentenced to the lesser offense of Sec. 12 especially because the public prosecutor raised his vigorous objection for accused' [s] plea of guilty from Sec. 5 to a lesser offense under Section 12, Article II of R.A. 9165. Thus, the order of this Court when it allowed the accused to enter a plea to a lesser offense without the consent of the public prosecutor is based upon the express provision of the rules that in the event that the public prosecutor will re-file this case, it will not violate the right of the accused against double jeopardy. The theory that the original information with which accused was charged was not abandoned is consistent [with] Sec. 2, par. 2, Rule 116 of the Rules of Court, to wit:

Sec. 2. Plea of guilty to a lesser offense. –

....

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

....

Moreover, if the accused' [s] contention that those who were charged with Section 5 but pleaded guilty to Section 12 can apply for probation would be followed, the express provision in the plea bargaining framework that the probation law shall not apply on offenses punishable under Section 5 in relation to Section 24 of R.A. 9165 is useless and nugatory since no person in his right mind would voluntarily plead guilty to drug trafficking or pushing which is punishable by life imprisonment. Assuming arguendo that an accused charged for violation of Section 5, Article II of R.A. 9165 would plead guilty to such crime, the plea bargaining framework will not apply since in such a case, there is no plea bargaining to speak of because said accused pleaded guilty as charged. This Court finds no ambiguity whatsoever in the intention of the framers of A.M. No. 18-03-16-SC when they included therein the inapplicability of the probation law hereof.<sup>41</sup>

The trial court reasoned that since the public prosecutor raised objections to the plea bargaining agreement, petitioner was then convicted of violation of Section 5 even if the sentence imposed corresponds to Section 12 of Republic Act No. 9165.<sup>42</sup>

The trial court also quoted Rule 116, Section 2 of the 1988 Rules of Criminal Procedure which states that “[a] conviction under this plea shall [be] equivalent to a conviction of the offense, charged for purposes of double jeopardy.”<sup>43</sup> However, this sentence has since been deleted in the present Rule

<sup>41</sup> *Id.* at 78–80.

<sup>42</sup> *Id.*

<sup>43</sup> RULES OF COURT (1988), Rule 116, sec. 2.

116, Section 2 of the 2000 Rules of Criminal Procedure.<sup>44</sup> The citation of a rule that is no longer in effect is a clear case of grave abuse of discretion.

The proper course of trial in case the public prosecutor objects to an accused's plea bargain was discussed in *People v. Borrás*.<sup>45</sup>

Verily, the trial court here acted with grave abuse of discretion when it disregarded the prosecutor's vigorous objection to private respondent's plea bargaining proposal. In view of the parties' failure to strike a mutual agreement on the matter, the trial court should have ordered the continuation of the proceedings instead of rendering a verdict of conviction based on private respondent's invalid pleas of guilty to two (2) counts of Illegal Possession of Drug Paraphernalia.<sup>46</sup>

Applying *Borrás*, if the public prosecutor objected to petitioner's plea of guilty to a lesser offense, the trial for violation of the illegal sale case should have continued. The trial court should not have convicted petitioner based on his plea of guilty to a lesser offense. Yet, the trial court proceeded to do so, instead of continuing with the proceedings.

*Estipona v. Lobrigo*<sup>47</sup> explained why the consent of both parties is required for a plea bargaining agreement to be valid:

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."

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

<sup>44</sup> RULES OF COURT, Rule 116, sec. 2.

<sup>45</sup> G.R. No. 250295, March 15, 2021 [Per J. Lazaro-Javier, Second Division].

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

<sup>47</sup> 816 Phil. 789 (2017) [Per J. Peralta, *En Banc*].



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>48</sup> (Emphasis supplied, citations omitted)

In addition, prosecutorial discretion is an executive function. Approval of a plea bargain over the objection of the prosecutor violates the separation of powers between the Judiciary and the Executive.<sup>49</sup>

Another instructive case is *People v. Montierro*,<sup>50</sup> which involved a similar set of facts as the present case. In *Montierro*, the accused was charged with violation of Section 5 of Republic Act No. 9165. The accused offered to plead guilty to Section 12 of Republic Act No. 9165. The prosecutor objected based on the provisions of DOJ Circular No. 027. At that time, DOJ Circular No. 027 was not yet amended. The trial court approved the plea bargain despite the objection of the prosecution. On appeal, the validity of the plea bargain was put into issue. This Court resolved the issue and explained:

The breadth of judicial discretion in approving a plea bargain, particularly in relation to offenses under RA No. 9165, was further elaborated upon in the Court *En Banc*'s Resolution dated April 2, 2019 entitled Re: Letter of Associate Justice [(now retired Chief Justice)] Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association. The Resolution addressed, among others, the apparent conflict between the trial court's discretion to allow plea bargaining under the guidelines of the Plea Bargaining Framework in Drugs Cases and the prosecution's objection thereto following DOJ Circular No. 27, to wit:

The Court takes exception to the claim that allowance of plea bargaining over the objection of the prosecution, "*is alarming and a direct affront to the government's intensified campaign against the 'menace of illegal drugs' under President Rodrigo Roa Duterte because the courts concerned have, in effect, degraded the penalties provided by R.A. 9165—particularly for violation of Section 5, Article II thereof—since the accused are allowed to plead guilty to violation of Section 12 only where the penalty is minimal and probationable. Section 5, Article II, of R.A. 9165 is being defanged/rendered toothless and the accused are merely given a 'slap-on-the-wrist' by the courts concerned. And, the efforts of the police and the Prosecution will be gone to waste.*"

The Court explained in *Estipona* that it is towards the provision of a simplified and inexpensive procedure for the

<sup>48</sup> *Id.* at 814–816.

<sup>49</sup> J. Leonen, Separate Concurring Opinion in *People v. Montierro*, G.R. No. 254564, July 26, 2022 [Per J. Caguioa, *En Banc*], at 3–5. This refers to the pinpoint citation of the copy of the separate concurring opinion uploaded to the Supreme Court website.

<sup>50</sup> G.R. No. 254564, July 26, 2022 [Per J. Caguioa, *En Banc*].

speedy disposition of cases in all courts that the rules on plea bargaining was introduced. x x x

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Significantly, plea bargaining is always addressed to the sound discretion of the judge, guided by Court issuances, like A.M. No. 18-03-16-SC dated April 10, 2018. **If the objection to the plea bargaining is solely to the effect that it will weaken the drug campaign of the government, then the judges may overrule such objection because they are constitutionally bound to settle actual controversies involving rights which are legally demandable and enforceable. Judges must decide cases based on evidence, law and jurisprudence, and they cannot just defer to the policy of another Branch of the government. However, if objections to the plea bargaining are valid and supported by evidence to the effect that the offender is a [recidivist], a habitual offender, or known in the community as a drug addict and a troublemaker, or one who has undergone rehabilitation but had a relapse, or has been charged many times, or when the evidence of guilt of the charge is strong, courts should not allow plea bargaining, because that will not help keep law and order in the community and the society. And just because the prosecution and the defense agree to enter into a plea bargain, it does not mean that the courts will approve the same. The judge must still exercise sound discretion in granting or denying plea bargaining, taking into account relevant circumstances, such as the character of the accused.** (Emphasis and underscoring supplied)

Synthesizing the foregoing jurisprudential pronouncements, and cognizant of the ends of the plea bargaining process in drugs cases, the Court herein clarifies that the consent of the parties is necessary **but the approval of the accused's plea of guilty to a lesser offense is ultimately subject to the sound discretion of the court.** In the exercise of this discretion, the trial court's duty is to evaluate the qualifications of the accused and the circumstances or evidence of the case. It is mandated to decide each case based on evidence, law, and jurisprudence, and to ensure that the applicant in a plea bargain is not: (1) a recidivist, (2) habitual offender, (3) known in the community as a drug addict and troublemaker, (4) one who has undergone rehabilitation but had a relapse, and (5) one who has been charged many times. Thus, plea bargaining cannot be approved when the accused is not qualified or the evidence of his/her guilt is strong.

Clearly, trial courts are in the best position to objectively and disinterestedly assess whether the facts, the evidence, and the circumstances of the accused necessitate a plea bargaining agreement. As impartial tribunals, courts are in the best position to ultimately determine the propriety of plea bargaining in each case.<sup>51</sup> (Emphasis in the original, citations omitted)

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<sup>51</sup> *Id.* at 25-27.

At present, DOJ Circular No. 027 has been amended by the May 10, 2022 DOJ Circular No. 18.<sup>52</sup> This renders moot the public prosecutor’s objection to the plea bargain based on DOJ Circular No. 027. However, we recognize that the public prosecutor may have other grounds for objecting to the plea bargain.

Thus, the plea bargain in the illegal sale case is invalid for lack of consent of the public prosecutor. We remand this case to the court of origin to determine whether both parties consent to a plea bargaining agreement and for further proceedings. We refrain from ruling on whether petitioner is entitled to apply for probation.

Still, we rule that it was grave abuse of discretion for the trial court judge to hold that petitioner was “ineligible to apply for probation,”<sup>53</sup> on the reasoning that petitioner was convicted of violation of Section 5 of Republic Act No. 9165.<sup>54</sup>

The facts show that for both criminal cases, petitioner pleaded guilty to a lesser offense, specifically Section 12 of Republic Act No. 9165. In the illegal possession case, the trial court gave due course to the application for probation and “directed the Bataan Provincial Probation Officer to conduct an investigation . . . and submit a report within sixty (60) days.”<sup>55</sup>

Petitioner contends that he was never convicted of drug trafficking or pushing, and thus, he is not disqualified from applying for probation. He may have been charged with violation of Section 5, but he was convicted under Section 12 of Republic Act No. 9165.<sup>56</sup>

The applicable portion of A.M. No. 18-03-16-SC<sup>57</sup> provides:

Offense Charged			Acceptable Plea Bargain		Remarks
Section	Penalty	Quantity	Section	Penalty	
Section 5. Sale, Trading, etc. of Dangerous Drugs (Methamphetamine hydrochlorid	Life Imprisonment to Death and fine ranging from ₱500,000 to ₱10,000,000	.01 gram to .99 grams (methamphetamine hydrochloride or shabu only)	Section 12. Possession of Equipment, 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.	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

<sup>52</sup> Revised Amended Guidelines on Plea Bargaining for Republic Act No. 9165 Otherwise Known as the “Comprehensive Dangerous Drugs Act of 2002.”

<sup>53</sup> *Rollo*, p. 77.

<sup>54</sup> *Id.* at 78.

<sup>55</sup> *Id.* at 20.

<sup>56</sup> *Id.* at 29–31.

<sup>57</sup> Adoption of the Plea Bargaining Framework in Drugs Cases, April 10, 2018.

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<p>e or shabu only)</p>				<p>NB: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.</p> <p>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. <i>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 [Section] 24 thereof, then the law on probation shall apply.</i> (Emphasis supplied)</p>
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Meanwhile, Republic Act No. 9165 provides:

SECTION 24. Non-applicability of the Probation Law for Drug Traffickers and Pushers. – Any person *convicted for drug trafficking or pushing under this Act*, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended. (Emphasis supplied)

Section 24 uses the word “convicted” and not “charged with.” An accused must have been convicted before it can be determined whether the accused is eligible to apply for probation.

In relation to this, the Probation Law, as amended, provides:

SECTION 9. *Disqualified Offenders.* — The benefits of this Decree shall not be extended to those:

- (a) sentenced to serve a maximum term of imprisonment of more than six (6) years;
- (b) convicted of any crime against the national security;
- (c) who have previously been convicted by final judgment of an offense punished by imprisonment of more than six (6) months and one (1) day and/or a fine of more than one thousand pesos (P1,000.00);
- (d) who have been once on probation under the provisions of this Decree; and
- (e) who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof.<sup>58</sup>

In disqualifying offenders applying for probation, Section 9 of the Probation Law clearly contemplates the penalty imposed after an accused has been found guilty, and not the penalty imposable based on the offense charged. Thus, even if petitioner was charged with an offense that disqualifies him from applying for probation, the question of his eligibility is based on the nature of the offense he was convicted of, or the sentence imposed by the court.

A similar issue was decided by this Court in *Pascua v. People*:<sup>59</sup>

It is clear from both Section 24, Article II of RA 9165 and the provisions of the Probation Law that in applying for probation, **what is essential is not the offense charged but the offense to which the accused is ultimately found guilty of.**

In this regard, it is worth emphasizing that upon acceptance of a plea bargain, the accused is actually found guilty of the lesser offense subject of the plea. According to jurisprudence, “[p]lea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant’s pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.”<sup>60</sup> (Emphasis in the original).

To clarify, petitioner’s eligibility to apply for probation will depend on the trial court’s ruling in the illegal sale case. We also remind petitioner that before probation can be granted, there are guidelines that must be followed. For instance, Section 8 of the Probation Law provides:

SECTION 8. *Criteria for Placing an Offender on Probation.* —

In determining whether an offender may be placed on probation, the

<sup>58</sup> Presidential Decree No. 968 (1976), as amended by Republic Act No. 10707 (2015).

<sup>59</sup> G.R. No. 250578, September 7, 2020 [Per J. Perlas-Bernabe, Second Division].

<sup>60</sup> *Id.*

court shall consider all information relative to the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources. Probation shall be denied if the court finds that:

(a) the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

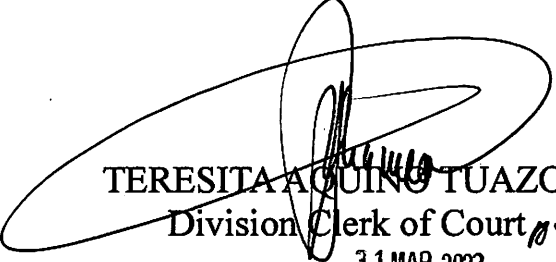
(b) there is undue risk that during the period of probation the offender will commit another crime; or

(c) probation will depreciate the seriousness of the offense committed.

**ACCORDINGLY**, the Petition is **PARTLY GRANTED**. The June 25, 2019 and October 16, 2019 Resolutions of the Court of Appeals in CA-G.R. SP No. 161128 are **REVERSED** and **SET ASIDE**. The case is remanded to the court of origin for further proceedings in Criminal Case No. 19558.

**SO ORDERED.”**

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court *sp*  
31 MAR 2023

PUBLIC ATTORNEY'S OFFICE (reg)  
Special & Appealed Cases Service  
Department of Justice  
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OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

DARIO ZABALA, JR. (reg)  
Petitioner  
c/o The Jail Warden  
Bureau of Jail Management and Penology  
Balanga City, Bataan District Jail  
2100 Bataan

- more -

(178)URES

THE JAIL WARDEN (reg)  
Bureau of Jail Management and Penology  
Balanga City, Bataan District Jail  
2100 Bataan

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 1  
Balanga City, 2100 Bataan  
(Crim. Case No. 19558)

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Supreme Court, Manila

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Ma. Orosa Street  
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CA-G.R. SP No. 161128

*Please notify the Court of any change in your address.*  
GR250152. 2/15/2023(178)URES *plg*