



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated April 12, 2023 which reads as follows:

“G.R. No. 260343 (Leonardo Borda y Embat alias “Toto”, Petitioner v. People of the Philippines, Respondent). — This Court resolves the Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court by Leonardo Borda y Embat alias “Toto” (*Borda*), assailing the Decision² and Resolution³ of the Court of Appeals (*CA*), which ordered the Regional Trial Court (*RTC*) to proceed with the criminal cases in Criminal Cases Nos. C-19-17 to C-22-17, thereby setting aside the *RTC* decision that downgraded the charges for violation of Republic Act (*R.A.*) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 against Borda and convicting him thereon pursuant to a plea of guilt on the downgraded charges.

Facts

In four separate Informations, Borda was charged with violation of Sections 5, 11 and 12, Article II of R.A. No. 9165. The accusatory portion of each Information reads as follows:

Criminal Case No. C-19-17

That on or about the 24th day of November, 2016, in the City of Roxas, and within the jurisdiction of this Court, the said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously sell, distribute, deliver and/or transport to PO2 Herman I. Habulan, one (1) piece heat-sealed transparent plastic sachet containing methamphetamine hydrochloride (*shabu*), a dangerous drug, with a total weight of 0.0116 gram, without authority to sell, and/or transport the same in consideration of the P300.00.

¹ *Rollo*, pp. 12–41.

² *Id.* at 138–148. The Decision dated September 11, 2020 in CA-G.R. SP No. 12670 was penned by Associate Justice Emily R. Aliño-Geluz, with Associate Justices Gabriel T. Ingles and Lorenza R. Bordios, concurring.

³ *Id.* at 161–166. The Resolution dated November 24, 2021 in CA-G.R. SP No. 12670 was penned by Associate Justice Lorenza R. Bordios, with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, concurring.

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CONTRARY TO LAW.⁴

Criminal Case No. C-20-17

That on or about the 24th day of November, 2016, in the City of Roxas, and within the jurisdiction of this Court, the said accused, did then and there willfully, unlawfully and feloniously have in his possession, control, and custody, three (3) pieces transparent heat sealed plastic sachets containing marijuana with a total weight of [0.]3246 gram, without being authorized by law to possess the same.

[CONTRARY TO LAW].⁵

Criminal Case No. C-21-17

That on or about the 24th day of November, 2016, in the City of Roxas, and within the jurisdiction of this Court, the said accused, did then and there willfully, unlawfully and feloniously have in his possession, control, and custody, six (6) pieces transparent heat sealed plastic sachets containing white crystalline substance of suspected methamphetamine hydrochloride (shabu), a dangerous drug, with a total weight of 0.0351 gram, a dangerous drug, without being authorized by law to possess the same.

[CONTRARY TO LAW].⁶

Criminal Case No. C-22-17

That on or about the 24th day of November, 2016, in the City of Roxas, and within the jurisdiction of this Court, the said accused, did then and there willfully, unlawfully and feloniously without being authorized by law, have under his possession and control the following drug equipment, instrument, apparatus and/or paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing dangerous drugs into the body, to wit: two (2) pieces open sachets with suspected shabu residue; three (3) pieces aluminum foil containing traces of shabu residue; two (2) pieces aluminum foil containing traces of shabu residue; two (2) pieces improvised totters; and two (2) pieces disposable lighter.

[CONTRARY TO LAW].⁷

When arraigned, Borda pleaded not guilty to the charges.⁸ Thereafter, trial on the merits ensued.

⁴ *Id.* at 139.

⁵ *Id.*

⁶ *Id.* at 139–140.

⁷ *Id.* at 186.

⁸ *Id.* at 140.

Pending the case of Borda with the RTC, this Court promulgated A.M. No. 18-03-16-SC,⁹ otherwise known as the Plea-Bargaining Framework, pursuant to the rule-making power vested by the 1987 Constitution. Under this framework, plea bargaining is permitted in criminal charges under Section 5 of R.A. No. 9165 when the quantity involved is .01 gram to .99 grams of methamphetamine hydrochloride or *shabu*. Under such scenario, the acceptable plea bargain is Section 12 of R.A. No. 9165 or the illegal possession of drug paraphernalia punishable with imprisonment of six months and one day to four years and a fine ranging from PHP 10,000.00 to PHP 50,000.00.

In line with A.M. No. 18-03-16-SC, Borda filed a proposal for plea bargaining,¹⁰ to plead guilty in Criminal Case Nos. C-19-17, C-20-17, and C-21-17, to a violation of Section 12 of R.A. No. 9165, which carries the penalty of six months and one day to four years and a fine ranging from PHP 10,000.00 to PHP 50,000.00. For Criminal Case No. C-22-17, Borda proposed to plead guilty to a violation of Section 15 of R.A. No. 9165, which carries the penalty of a six-month treatment and rehabilitation.

The prosecution, through Assistant City Prosecutor Randy Vallega Billanes, registered a Comment,¹¹ to the proposal in view of the guidelines set forth in Department of Justice Circular No. 027 (*DOJ Circular No. 027*), otherwise known as the Amended Guidelines on Plea Bargaining for R.A. No. 9165. Based on the said circular, the acceptable plea for violation of Section 5, R.A. No. 9165, which is the charge in Criminal Case No. C-19-17, when the quantity of *shabu* involved is less than five grams or when the quantity of marijuana is less than 300 grams is the lesser offense of paragraph 3, Section 11 of R.A. No. 9165 (illegal possession of dangerous drugs), punishable with imprisonment of 12 years and one day to 20 years and a fine of PHP 300,000.00 to PHP 400,000.00. For Criminal Case Nos. C-20-17, C-21-17, and C-22-17, the prosecution had already commenced presenting its evidence in all the cases.

In an Order,¹² the RTC overruled the objection. It held that the total weight of *shabu* allegedly sold and possessed by Borda, qualified him to avail the benefits of A.M. No. 18-03-16-SC. The RTC likewise gave supremacy to the authority of this Court to promulgate rules concerning plea bargaining as opposed to the DOJ Circular No. 027. Further, it held that the evidence of the prosecution revealed insufficiency to convict Borda as charged.

Thus, the former plea of not guilty was vacated and Borda was re-arraigned in the four cases as follows: (1) in Criminal Case No. C-19-17,

⁹ OCA CIRCULAR NO. 90-2018: ADOPTION OF THE PLEA-BARGAINING FRAMEWORK IN DRUGS CASES dated April 10, 2018.

¹⁰ *Id.* at 99-100.

¹¹ *Id.* at 101-104.

¹² *Id.* at 113.

Borda pleaded guilty to violation of Section 12, Article II of R.A. No. 9165; (2) in Criminal Case No. C-20-17, Borda pleaded guilty to violation of Section 12, Article II of R.A. No. 9165; (3) in Criminal Case No. C-21-17, Borda pleaded guilty to violation of Section 12, Article II of R.A. No. 9165; and (4) in Criminal Case No. C-22-17, pleaded guilty to violation of Section 15, Article II of R.A. No. 9165.

The RTC then rendered its Decision,¹³ the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. C-19-17, accused Leonardo Borda [y] Embat a.k.a. "Toto" is found **GUILTY** beyond reasonable doubt of the crime of violation of Section 12, Article II of R.A. 9165 and is hereby sentenced to imprisonment consisting of six (6) months and one (1) day to three (3) years and to pay a fine of [P]10,000.00;
2. In Criminal Case No. C-20-17, accused Leonardo Borda [y] Embat a.k.a. "Toto" is found **GUILTY** beyond reasonable doubt of the crime of violation of Section 12, Article II of R.A. 9165 and is hereby sentenced to imprisonment consisting of six (6) months and one (1) day to one (1) year and to pay a fine of [P]10,000.00;
3. In Criminal Case No. C-21-17, accused Leonardo Borda [y] Embat a.k.a. "Toto" is found **GUILTY** beyond reasonable doubt of the crime of violation of Section 12, Article II of R.A. 9165 and is hereby sentenced to imprisonment consisting of six (6) months and one (1) day to one (1) year and to pay a fine of [P]10,000.00;
4. In Criminal Case No. C-22-17, accused Leonardo Borda [y] Embat a.k.a. "Toto" is found **GUILTY** beyond reasonable doubt of the crime of the crime (sic) of violation of Section 15, Article II of R.A. 9165 and is hereby sentenced to imprisonment consisting of six (6) months of drug treatment and rehabilitation.

Accused's detention period and his yet to be served drug treatment and rehabilitation shall be credited in his service of sentences.

Unless accused had already served the maximum penalties imposed, he is advised to avail the benefits of probation and be released on recognizance before the start of his drug treatment and rehabilitation.

Accused is mandated to report to the DOH treatment and Rehabilitation Center, Brgy. Rumbang, Pototan[,] Iloilo[,] for the proper orientation of the terms and condition of his **OUTPATIENT** drug treatment and rehabilitation within fifteen (15) days from his release.

The sachets of shabu, marijuana[,] and drug paraphernalia are confiscated to be turned over to the Philippine Drug Enforcement Agency Region VI, Iloilo City[,] for proper disposal. The buy-bust money shall be turned over to the national treasury.

SO ORDERED.¹⁴ (Emphasis in the original)

¹³ *Id.* at 82-88.

¹⁴ *Id.* at 87-88.

The prosecution moved for reconsideration but the RTC denied the same.¹⁵

The Office of the Solicitor General filed a Petition for *Certiorari* before the CA, which was granted in its Decision dated September 11, 2020. The CA pointed out that the RTC committed grave abuse of discretion in granting Borda's plea bargain considering that the prosecutor did not consent to the same. As such, the CA set aside Borda's conviction to a lesser offense and remanded the case back to the RTC for continuation of the proceedings.

Aggrieved, Borda moved for reconsideration,¹⁶ but the same was denied by the CA in a subsequent Resolution.¹⁷

Hence, the present Petition.

Issue

Whether the CA gravely erred in holding that the RTC committed grave abuse of discretion in allowing petitioner Leonardo Borda y Embat alias "Toto" to plea bargain over the objection of the prosecution.

This Court's Ruling

The issue raised in the instant Petition has already been addressed and resolved in the recent consolidated cases of *People v. Montierro*,¹⁸ *Baldaderra v. People*,¹⁹ and *Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions in G.R. No. 247575 and G.R. No. 250295*,²⁰ In said cases, this Court took judicial notice of a supervening event that significantly changed the outcome of the present case, the issuance of DOJ Circular No. 18 which took effect on May 10, 2022. Said issuance introduced amendments that conform to this Court's Plea-Bargaining Framework. The relevant portion of DOJ Circular No. 18 states:

OFFENSE CHARGED IN INFORMATION		ACCEPTABLE PLEA BARGAIN	
Section	Penalty	Section	Penalty
Section 5	Life Imprisonment to Death and Fine from PHP 500,000 to PHP 10,000,000	Section 12 Possession of Equipment,	6 months and 1 day to 4 years and a fine ranging

¹⁵ *Id.* at 142.

¹⁶ *Id.* at 149-158.

¹⁷ *Id.* at 161-166.

¹⁸ G.R. Nos. 254564, 254974, and A.M. No. 21-07-16-SC, July 26, 2022 [Per J. Caguioa, *En Banc*].

¹⁹ G.R. No. 254974, July 26, 2022 [*Per Curiam, En Banc*].

²⁰ A.M. No. 21-07-16-SC, July 26, 2022 [*Per Curiam, En Banc*].

Sale, Trading, etc. of Dangerous Drugs		Apparatus, and Other Paraphernalia for Dangerous Drugs (Plea Bargaining is allowed only of the drugs involved are .01 to .99 gram of methamphetamine hydrochloride or "shabu" and/or .01 gram to 9.99 grams of marijuana)	from PHP 10,000 to PHP 50,000
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As explained in *Montierro*:

At the very outset, the Court takes judicial notice of DOJ Department Circular No. 18 dated May 10, 2022 (DOJ Circular No. 18), which took effect on the same date. It appears that DOJ Circular No. 18 amended DOJ Circular No. 27 to conform to the Court-issued Plea Bargaining Framework in Drugs Cases.

Under DOJ Circular No. 27, an accused charged with violation of Section 5 of RA No. 9165 (for less than 5 grams of shabu or less than 300 grams of marijuana) may plead guilty to a lesser offense under Section 11, paragraph 3 or Possession of Dangerous Drugs; whereas, under the Court's Plea Bargaining Framework in Drugs Cases, the acceptable plea for violation of Section 5 of RA No. 9165 (for 0.01 gram to 0.99 gram of shabu or 0.01 gram to 9.99 grams of marijuana) is the lesser offense of Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs under Section 12 of RA No. 9165. This inconsistency was reconciled in DOJ Circular No. 18, where the acceptable plea for violation of Section 5 of RA No. 9165 is now Section 12 of RA No. 9165, which is in accordance with the Court's Plea Bargaining Framework in Drugs Cases.

With the amendments introduced in DOJ Circular No. 18, the prosecution's objection to *Montierro* and *Baldadera's* plea bargaining proposals, which was based solely on DOJ Circular No. 27, can now be considered as effectively withdrawn.

With the absence of any objection on the part of the prosecution, applications for plea bargaining, especially for violation of Section 5 of R.A. No. 9165 should no longer be denied on the sole ground of the absence of consent of the prosecution. Nonetheless, plea bargaining should follow the guidelines set forth in *Montierro* to wit:

1. Offers for plea bargaining must be initiated in writing by way of a formal written motion filed by the accused in court.
2. The lesser offense which the accused proposes to plead guilty to must necessarily be included in the offense charged.

3. Upon receipt of a proposal for plea bargaining that is compliant with the provisions of the Plea Bargaining Framework in Drugs Cases, the judge shall order that a drug dependency assessment be administered. If the accused admits drug use, or denies it but is found positive after a drug dependency test, then he/she shall undergo treatment 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 after-care and follow-up program if the penalty is still unserved. If accused is found negative for drug use/dependency, then he/she will be released on time served, otherwise, he/she will serve his sentence in jail minus the counseling 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 thereof. If the trial court finds the objection meritorious, it shall order the continuation of the proceedings.

9. If an accused applies for probation in offenses punishable under RA 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.²¹ (Emphasis supplied)

²¹ *Id.*

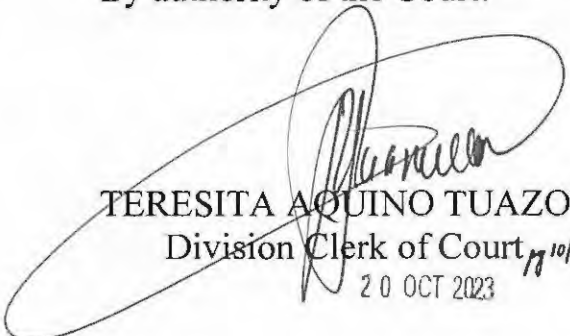
In the present case, the objection of the prosecution is solely on the ground that the proposal of the respondent is contrary to DOJ Circular No. 027 that, as have been discussed earlier, was already superseded by DOJ Circular No. 18. Under the guidelines, it is the trial court's duty, in the exercise of their discretion, to evaluate the qualifications of the accused and the circumstances or evidence of the case.²² Thus, it is necessary to remand the case, not only for the evaluation of evidence presented by the parties but also as to the qualifications of Borda to avail plea bargaining.

FOR THESE REASONS, the instant petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals dated September 11, 2020 in CA-G.R. SP No. 12670 is **SET ASIDE**. The instant case is **REMANDED** to Branch 16, Regional Trial Court, Roxas City to determine the following: (1) whether the evidence of guilt is strong; and (2) whether petitioner **LEONARDO BORDA y EMBAT alias "Toto"** is a recidivist, habitual offender, known in the community as a drug addict and troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times.

In addition, petitioner **LEONARDO BORDA y EMBAT alias "Toto"** is **ORDERED** to submit to a drug dependency test pursuant to A.M. No. 18-03-16-SC.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *pg 10/20*
20 OCT 2023

²² G.R. No. 254564, July 26, 2022 [Per J. Caguioa, *En Banc*].

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