



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated November 6, 2023, which reads as follows:

“G.R. No. 257740 (FRISCO DUQUE y YANGYANG a.k.a. “Ardong,” Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent). — Assailed in this Petition for Review on *Certiorari*¹ are the Decision² and the Resolution³ of the Court of Appeals (CA) Cebu City Station in CA-G.R. SP No. 12262. The challenged *Decision* granted the Petition for *Certiorari* filed by respondent People of the Philippines and reversed the Order of the Regional Trial Court (RTC) allowing Frisco Duque y Yangyang a.k.a. “Ardong” (petitioner) to plea-bargain to a lesser offense, whereas the impugned Resolution denied petitioner’s Motion for Reconsideration⁴ thereof.

The salient facts follow.

Petitioner was indicted for violation of Sections 5⁵ and

¹ *Rollo*, pp. 12–35.

² *Id.* at 89–101. The Decision dated January 26, 2021 was penned by Associate Justice Dorothy P. Montejo-Gonzaga with the concurrence of Associate Justices Gabriel T. Ingles and Bautista Gler Corpin, Jr.

³ *Id.* at 120–123. The Resolution dated July 7, 2021 was penned by Associate Justice Dorothy P. Montejo-Gonzaga with the concurrence of Gabriel T. Ingles and Bautista Gler Corpin, Jr. of the Court of Appeals Cebu City Station.

⁴ *Id.* at 102–114.

⁵ **Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.**— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One Hundred Thousand Pesos (P100,000.00) to Five Hundred Thousand Pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution, or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers, and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

11,⁶ Article II of Republic Act (R.A.) No. 9165⁷ in two separate Informations docketed as Criminal Case Nos. H-2283 and H-2284, for illegally selling and possessing *shabu* weighing 0.06 and 0.07 gram, respectively. The cases were raffled off to Branch 18, RTC of Hilongos, Leyte.

Upon arraignment, petitioner pled not guilty to both crimes. All the same, during pretrial, petitioner disclosed his intention to plea-bargain. Consequently, petitioner filed a Manifestation and Proposal for Plea

If the victim of the offense is a minor or a mentally incapacitated individual or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages, or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One Hundred Thousand Pesos (P100,000.00) to Five Hundred Thousand Pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

⁶ **Section 11. Possession of Dangerous Drugs.**— The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

- (1) Life imprisonment and a fine ranging from Four Hundred Thousand Pesos (P400,000.00) to Five Hundred Thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
- (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four Hundred Thousand Pesos (P400,000.00) to Five Hundred Thousand Pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five (hundred) 500) grams of marijuana; and
- (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (P300,000.00) to Four Hundred Thousand Pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

⁷ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, or the COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, approved on January 23, 2002 and published on June 7, 2002.

Bargaining⁸ expressing his willingness to plead to the lesser offense of Violation of Section 12⁹ of R.A. No. 9165 in the two criminal cases.

Still and all, the prosecution opposed the aforesaid motion. It averred that the plea bargaining from Section 5 to Section 12 of R.A. No. 9165 is contrary to the Department of Justice (DOJ) Circular No. 27¹⁰ dated June 26, 2018 which provides that the acceptable plea bargain for the charge of violation of Section 5 is to Section 11 of said law. Anent the plea bargaining to the charge of Section 11, the prosecution manifested that, as a matter of policy, it would need to first seek authority from the Provincial Prosecutor before it could give the required consent.¹¹

Despite the prosecution's opposition and manifestation, the RTC granted petitioner's motion in its Order¹² dated July 31, 2018, thus —

WHEREFORE, over the objection of the prosecution, the Court finds the plea[-]bargaining proposal to be in accord with the rationale of the law and the wisdom of A.M. No. 18-03-16-SC. Consequently, the plea bargaining is approved subject to the following conditions, to wit:

a) The accused shall undergo a DDE at the accredited drug testing center. The LSPJ, Hilongos, Leyte is thus directed to bring the accused to such facility for DDE.

b) Depending on the results of the DDE, the accused shall undergo rehabilitation, whether out-patient or-in-house (*sic*) as recommended, or counselling if the accused would turn out negative for drug dependency.

Let the accused be arraigned under the original information/s qualified by the approved lesser offense as plea bargained.

SO ORDERED.¹³

The prosecution then entreated the RTC to reconsider¹⁴ the foregoing Order and issue a new one denying petitioner's proposal to plea-bargain from

⁸ *Rollo*, p. 66.

⁹ **Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.** - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten Thousand Pesos (P10,000.00) to Fifty Thousand Pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus, and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested, or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

¹⁰ AMENDED GUIDELINES ON PLEA BARGAINING FOR REPUBLIC ACT 9165 OTHERWISE KNOWN AS THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

¹¹ *Rollo*, p. 67. Motion for Reconsideration.

¹² *Id.* at 63-65. The Order was penned by Executive Judge Ephrem S. Abando.

¹³ *Id.* at 64-65.

¹⁴ *Id.* at 67-69. Motion for Reconsideration.

the offenses charged. All the same, the RTC denied the prosecution's motion in its Order dated September 3, 2018.¹⁵

Ascribing grave abuse on the part of the RTC, the respondent, through the Office of the Solicitor General (OSG), filed a Petition for *Certiorari*¹⁶ before the CA, imploring that the Orders dated July 31, 2018 and September 3, 2018 of the RTC be annulled.

Pronouncing that the RTC indeed acted with whimsicality in approving the plea bargaining without the prosecution's consent,¹⁷ the CA rendered the challenged Decision reversing and setting aside the RTC's Orders, viz.:

"WHEREFORE, in view of the foregoing, the *Petition for Certiorari* is **GRANTED**. The *Order* dated July 31, 2018 and *Order* dated September 3, 2018 of the Regional Trial Court (RTC) of Hilongos, Leyte, 8th Judicial Region, Branch 18, in Criminal Case Nos. H-2283 and H-2284 are **REVERSED** and **SET ASIDE**. The Regional Trial Court (RTC) of Hilongos, Leyte, 8th Judicial Region, Branch 18 is hereby **ORDERED** to immediately proceed with the criminal cases filed against Frisco Duque y Yangyang a.k.a. 'Ardong'.

SO ORDERED.¹⁸

Dismayed, petitioner filed a motion for reconsideration thereof, which was given short shrift by the CA in the disputed Resolution dated July 7, 2021.

Via the present recourse, petitioner asserts that the CA erred in holding that the RTC gravely abused its discretion in granting his proposal for plea bargaining. Patently, the challenged Decision and Resolution are not in accordance with the Court's Administrative Matter (A.M.) No. 18-03-16-SC¹⁹ and applicable jurisprudence and, if not rectified, would cause him grave injustice. Thus, petitioner beseeches the Court to reverse and set aside the aforesaid Decision and Resolution and affirm the RTC's Orders dated July 31, 2018 and September 3, 2018.

The Court resolves the instant Petition for Review on Certiorari in light of its disquisition in the recent case of People v. Montierro²⁰ (Montierro) which substantially bears the same factual antecedents as in the case at bench.

¹⁵ *Id.* at 70. The Order was penned by Executive Judge Ephrem Suarez Abando.

¹⁶ *Id.* at 40-57.

¹⁷ *Id.* at 93-100. CA Decision.

¹⁸ *Id.* at 100. Emphasis in the original.

¹⁹ Adoption of the Plea Bargaining Framework in Drugs Cases dated April 10, 2018.

²⁰ G.R. No. 254564, July 26, 2022.

First off, it bears stressing that in the *Montierro* case, the Court took judicial notice that DOJ Circular No. 18²¹ amended DOJ Circular No. 27²² to conform to the plea bargaining framework under Administrative Matter No. 18-03-16-SC. Consequently, the prosecution's objection to the plea bargaining proposal based on DOJ Circular No. 27 is effectively withdrawn, rendering the case moot and academic. Nevertheless, the Court still decided the merits of *Montierro* given that it falls under the exceptions to the mootness doctrine —

[F]irst, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.²³

In the said case, the Court clarified, *inter alia*, that plea bargaining requires the consent of the parties, but its approval is subject to the sound discretion of the trial court, thus:

As can be gleaned from the foregoing, **the trial court's discretion to act on plea bargaining proposal is independent from the requirement of mutual agreement of the parties.** Whether the prosecution is for or against the accused's proposal to plead guilty to a lesser offense, **the trial court remains duty-bound to assiduously evaluate the qualifications of the accused and the circumstances of the case.**

....

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

²¹ REVISED AMENDED GUIDELINES ON PLEA BARGAINING FOR REPUBLIC ACT 9165 OTHERWISE KNOWN AS THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, dated May 10, 2022.

²² AMENDED GUIDELINES ON PLEA BARGAINING FOR REPUBLIC ACT 9165 OTHERWISE KNOWN AS THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, dated June 26, 2018.

²³ *People v. Montierro*, *supra*.

tribunals, courts are in the best position to ultimately determine the propriety of plea bargaining in each case.²⁴

The Court further annunciated—

It must be clarified that courts are not given the unbridled discretion to overrule any objection of the prosecution to a plea bargaining proposal. To be sure, the authority of the court over plea bargaining in drugs cases is circumscribed foremost by the Court-issued framework on the acceptable plea bargains and by the evidence and circumstances of each case. Thus, a court has no jurisdiction to overrule an objection of the prosecution if the same is grounded on evidence showing that the accused is not qualified therefor, or when the plea does not conform to the Court-issued rule or framework.²⁵

Accordingly, the Court formulated the following guidelines in plea bargaining of drugs cases:

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 the 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/her after-care and follow-up program if the penalty is still unserved. If the accused is found negative for drug use/dependency, then he/she will be released on time served, otherwise, he/she will serve his/her sentence in jail minus the counselling period at rehabilitation center.
4. As a rule, plea bargaining requires the 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 the relevant circumstances, including the character of the accused.

²⁴ *Id.* Emphasis supplied.

²⁵ *Id.*

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 criminal 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.

In light of the foregoing, the RTC's approval of petitioner's proposal for plea bargaining falls short of the standards set forth in *Montierro*. Indeed, the RTC's disquisition that the plea bargaining proposal is "in accord with the rationale of the law and the wisdom of A.M. No. 18-03-16-SC"²⁶ could hardly wash. Given that in plea bargaining applications, it is the trial court's duty to evaluate the qualifications of the accused and the circumstances or evidence of the case, then the RTC should have first determined whether the evidence of guilt is strong; and whether petitioner 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.²⁷

With the foregoing discourse, the Court deems it proper to remand this case to the court of origin to ascertain, based on the established guidelines, whether petitioner is indeed eligible to avail of the benefits of plea bargaining.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **PARTLY GRANTED**. The Decision dated January 26, 2021 and the Resolution dated July 7, 2021 of the Court of Appeals Cebu City Station in CA-G.R. SP No. 12262 are **SET ASIDE**. The instant case is **REMANDED** to the court of origin for it to determine whether petitioner Frisco Duque y

²⁶ *Rollo*, p. 64. RTC Order dated July 31, 2018.

²⁷ *People v. Montierro*, *supra* note 20.

Yangyang a.k.a. “Ardong” is qualified to avail of the benefits of entering into a plea bargaining with the State.

SO ORDERED.”

By authority of the Court:

Misael C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
1/22/24

Regional Special & Appealed Cases Unit
PUBLIC ATTORNEY'S OFFICE
3rd Floor, Taft Commercial Center
Metro Colon, Carpark, Osmena Boulevard
Brgy. Kalubihan, 6000 Cebu City

COURT OF APPEALS
CA G.R. CEB SP No. 12262
6000 Cebu City

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

The Presiding Judge
REGIONAL TRIAL COURT
Branch 18, Hilongos
6524 Leyte
(Crim. Case Nos. H-2283 & H-2284)

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