

EN BANC

[A.M. No. SB-14-21-J, January 19, 2021]

RE: ALLEGATIONS MADE UNDER OATH AT THE SENATE BLUE RIBBON COMMITTEE HEARING HELD ON SEPTEMBER 26, 2013 AGAINST GREGORY S. ONG, SANDIGANBAYAN.

R E S O L U T I O N

LEONEN, J.:

*"[P]ardon acts upon the past,
somehow repeats the event, purifying it.
[P]ardon conserves the past pardoned in the
purified present.
The pardoned being is not the innocent being. "*
- Emmanuel Levinas^[1]

*"Without being forgiven, released from the
consequences of what we have done,
our capacity to act would, as it were, be confined to
one single deed from which we could never
recover; we would remain the victims of its
consequences forever, not unlike the sorcerer's
apprentice who lacked the magic formula to
break the spell."*
- Hannah Arendt^[2]

Before this Court is a Plea for Judicial Clemency filed by former Sandiganbayan Justice Gregory S. Ong (Ong).

In the 2014 case of *In Re: Ong*,^[3] this Court had dismissed him from the service for gross misconduct, dishonesty, and impropriety, all in violation of the New Code of Judicial Conduct.

The administrative case was brought about by Ong's participation in a criminal case involving Janet Lim Napoles (Napoles). Back in 2010, he concurred in the Sandiganbayan case of *People v. Lt. Gen. Edgardo Viray Espinosa*^[4] (Kevlar case), where Napoles, among others, was charged with malversation of public funds through falsification of public documents and violation of Section 3(e) of Republic Act No. 3019.^[5]

The case unraveled the anomalous sale of 500 U.S.-made Kevlar helmets worth P3,865,310.00 to the Philippine Marine Corps. It was alleged that Napoles's dummies siphoned off the money and the helmets were not delivered as promised.
^[6]

The Sandiganbayan Fourth Division eventually acquitted Napoles in the decision concurred in by Ong.^[7] It found no malversation for lack of evidence showing that the accountable officer participated in preparing the procurement documents. For the accountable officer's lack of guilt, all of the accused were consequently acquitted of the charge.^[8]

On the charges of falsification, the Sandiganbayan found that the property inspection and acceptance report were falsified in conspiracy with the dealers. All the accused were found guilty of falsification, except for Napoles. In acquitting Napoles, it ruled that even if she owned the bank account where the 14 checks were deposited, there was no overt act on her part which equates to conspiracy.^[9]

In 2013, news broke out about the "pork barrel scam," the highly controversial story that involved the malversation of billions of government funds through bogus foundations. In the course of a Senate Blue Ribbon Committee investigation, Benhur Luy (Luy), Napoles's cousin and personal assistant, and Marina Sula (Sula), Napoles's former employee, testified that their former boss had settled the Kevlar case through Ong, who visited her twice in her office.^[10]

Luy further testified that the second time Ong went to their office, Napoles offered him to invest his money in the Armed Forces of the Philippines and Police Savings and Loan Association, Inc. (AFPSLAI), which offers a high annual interest rate of 13%. Ong agreed to invest P25.5 million, which would generate an interest of P3,102,000.00. Napoles then issued checks to give the interest in advance.^[11]

Around this time, a photo likewise caught the public's attention. It showed Ong and Napoles together, along with former Senator Jinggoy Estrada (Estrada), another personality embroiled in the controversy.^[12]

This Court accordingly conducted a *motu proprio* investigation and required Ong to submit his comment. In his Comment, Ong denied any irregularity in the Kevlar case and explained that he did not know Napoles while it was pending.^[13]

Explaining away his meeting with Napoles in her office, Ong insisted that the photo was captured during a party hosted by Estrada in 2012.^[14] He said that he simply visited Napoles to thank her for helping him access the robe of the Black Nazarene, which he believed would heal his prostate cancer. He maintained that there was nothing improper in his conduct because Napoles no longer had a case pending before the Sandiganbayan.^[15]

Upon evaluation, this Court assigned the case to retired Justice Angelina Sandoval-Gutierrez, who then recommended that Ong be found guilty of gross misconduct, dishonesty, and impropriety.^[16]

In 2014, this Court found Ong guilty of gross misconduct, dishonesty, and impropriety. He was dismissed from the service, with forfeiture of all retirement benefits and with prejudice to reemployment in government service, thus:

WHEREFORE, the Court finds respondent Sandiganbayan Associate Justice Gregory S. Ong **GUILTY** of **GROSS MISCONDUCT, DISHONESTY** and **IMPROPRIETY**, all in violations of the New Code of Judicial Conduct for the Philippine Judiciary, for which he is hereby

DISMISSED from the service, with forfeiture of all retirement benefits, except accrued leave credits, if any, and with prejudice to reemployment in any branch, agency or instrumentality of the government including government-owned or -controlled corporations.

This Decision is **IMMEDIATELY EXECUTORY**.

SO ORDERED.^[17] (Emphasis in the original)

This Court held that the totality of the circumstances of Ong's association with Napoles revealed his "corrupt inclinations" that tarnished the judiciary's image. It gave credence to the whistleblowers' testimonies that Napoles was referring to Ong as her contact in the Sandiganbayan, as they had seen him visit their office. Meanwhile, it found that Ong could not corroborate his reason for visiting Napoles.^[18]

This Court ruled that Ong's acts violated Canon 4, Section 1 of the New Code of Judicial Conduct^[19] for causing the public to doubt the fairness of his participation in the Kevlar case.^[20]

This Court further found Ong guilty of dishonesty when he denied in his letter to the Chief Justice that he attended Napoles's events and failed to mention that he had visited Napoles. It noted that only when Luy and Sula mentioned that he was Napoles's contact in the Sandiganbayan did Ong disclose visiting Napoles.^[21]

Five years later, Ong now comes to this Court with a Plea for Judicial Clemency, praying that his retirement benefits be restored and that the prohibition against his reemployment in the government be lifted.^[22]

Ong claims that the passage of time turned him into a "remorseful and better individual."^[23] He states that he took full responsibility for his actions and that he humbly accepted the adverse decision of this Court in "a sincere expression of repentance for a past malfeasance."^[24]

After almost 30 years of government service, Ong claims that he has "contributed to legal scholarship and public service."^[25] Even after he was dismissed, he says that he continued to provide free legal service. He also maintains that since he has been cleared of cancer, he still has productive years ahead of him to redeem himself and be of service to the public.^[26]

Ong reasons that the restoration of these privileges is also a matter of economic necessity for him.^[27] He is firm that he has never "reneged on his duties and responsibilities as a member of the judiciary in exchange for monetary consideration."^[28]

Citing the guidelines laid down in *In Re: Diaz*^[29] in granting requests for judicial clemency, Ong submits several testimonies in support of his plea.

Justice Jose P. Perez, a retired member of this Court who dissented in *In Re: Ong*, affirms that Ong was "honest and fair in his dealings as a judge"^[30] and the penalty imposed on him was too harsh. He reasons that ample time has lapsed and he has only heard good impressions about Ong.^[31]

Atty. Vicente M. Joyas, former president and Board of Governors member of the Integrated Bar of the Philippines, narrates that in his stint from 2013 to 2017, he has never received any negative feedback or complaint against Ong. He also heard that Ong was quite strict when he was still a justice and unapproachable outside the court.^[32]

Rev. Fr. Alexander P. Balatbat, a clergy member of the Diocese of Antipolo and Ong's spiritual adviser, testifies that he has seen Ong's acts of kindness and charity, and that he remained steadfast in his faith regardless of what happened to him.^[33]

WM Rogelio R. Uy, Jr., master of the Masonic organization Noli Me Tangere Lodge No. 42, likewise affirms that Ong had been a "strict, straight, and upright prosecutor and magistrate."^[34] He says that while Ong was found guilty, his good reputation remained the same.^[35]

Additionally, Ong attached his NBI clearance to his plea, proving that he has no criminal record on file.^[36]

Later, Ong also submitted a medical abstract stating that his prostate cancer has recurred and he needs to have an operation and possible chemotherapy.^[37]

Before deciding on the reliefs requested, this Court needs to clarify the concepts of forgiveness and clemency.

Forgiveness is a chosen response of an individual harmed by another's wrongdoing. It is often personal in nature. One needs to deserve to be forgiven. It is different from generally being excused from a penalty.

Clemency, on the other hand, when granted by this Court, is an extraordinary act based on equity. It must: (1) not transgress existing laws; (2) not override the choice of those who have been wronged; and (3) should, as much as possible, be based on established facts and accepted normative or ethical values. Most important, we should be aware of the precedents we create and the social or cultural impact of the clemencies we grant.

In contrast to forgiveness, the wrongful act involved in clemency caused not merely personal, but public injury. Thus, clemency should be preceded by an apology not only to the person wronged, but to the entire society. Apologies of any nature must be preceded by a full and unconditional acceptance of the wrong committed and the justness of the penalty imposed.

Clemency is in the nature of pardon based on mercy. Pardon and mercy translate to the commutation of the penalty, either wholly or partially. Pardon and mercy are, therefore, uniquely personal to the wrongdoer. However, the act of granting clemency should not go against a public or moral good. Clemency can only be granted when its conditions are fully, unequivocally, and unconditionally accepted by the wrongdoer.

Judicial clemency is "an act of mercy removing any disqualification,"^[38] which may be granted only upon a strong proof that it is warranted. To be granted judicial clemency, a claimant must show evidence of reformation and potential.^[39]

However, clemency should not only be seen as an act of mercy. It is not only for the wrongdoer's convenience. The interests of the person wronged, as well as society in general—especially its value in precedent—should always be taken into primordial consideration.

Judicial clemency is neither a right nor a privilege that one can avail of at any time. [40] Its grant must be delicately balanced with the preservation of public confidence in the courts. [41] *Junio v. Rivera*, [42] explains:

To be sure, we have always been unsparing in wielding the rod of discipline against members of the Judiciary who fall short of the exacting standards decreed by the Code of Judicial Conduct. This is because a judge, upon his assumption to office, becomes the visible representation of the law and of justice. Membership in the judiciary circumscribes one's personal conduct and imposes upon him certain restrictions, whose faithful observance is the price one has to pay for holding such an exalted position. Thus, a magistrate of the law must comport himself in a manner that his conduct must be free of a whiff of impropriety, not only with respect to the performance of his official duties, but also to his behavior outside his sala and as a private individual. His conduct must be able to withstand the most searching public scrutiny, for the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system. We certainly do not require judges to measure up to the standards of conduct of the saints and martyrs, but we do expect them to be like Caesar's wife in all their actions. Hence, their faithful adherence to the Code of Judicial Conduct is strictly demanded. A lackadaisical attitude towards these judicial standards is impermissible. [43] (Citations omitted)

Judicial clemency cannot be subjective. The more we have personal connections with one who pleads for clemency, the more we should seek to distance ourselves. It is also anticipated that pleas for judicial clemency are largely self-serving. Hence, in such cases, this Court has considered several factors which, to an extent, provide objective criteria in granting or denying clemency. *Re: Diaz* summarized these factors:

1. There must be proof of remorse and reformation. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges[s] associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.
2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation.
3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.
4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the