

EN BANC

[G.R. Nos. 244413 & 244415-16, February 18, 2020]

NURULLAJE SAYRE Y MALAMPAD @ "INOL", PETITIONER, VS. HON. DAX GONZAGA XENOS, IN HIS CAPACITY AS THE PRESIDING JUDGE OF REGIONAL TRIAL COURT OF PANABO CITY, DAVAO DEL NORTE, BRANCH 34; HON. MENARDO I. GUEVARRA, SECRETARY OF THE DEPARTMENT OF JUSTICE; AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

CARANDANG, J.:

This is a Petition for *Certiorari* and Prohibition^[1] under Rule 65 of the Rules of Court, assailing the Order^[2] dated December 6, 2018 of public respondent Hon. Dax Gonzaga Xenos (Presiding Judge Xenos), Presiding Judge of the Regional Trial Court (RTC) of Panabo City, Davao del Norte, Branch 34, in Crim. Case Nos. CRC 416-2017, 417-2017, and 418-2017, the dispositive portion of which reads:

WHEREFORE, the Motion to Plea Bargain is DENIED. Set the pretrial to 31 January 2018 [sic] at 1:00 p.m.

SO ORDERED.^[3] (Italics and underscoring in the original.)

In an Order^[4] dated January 23, 2019, the RTC denied the Motion for Reconsideration^[5] of Nurullaje Sayre y Malampad @ "Inol" (Sayre).

The Antecedents

Sayre was charged with violation of Sections 5, 11, and 12, Article II of Republic Act No. (R.A.) 9165,^[6] in three separate Information,^[7] which respectively read as follows:

CRIMINAL CASE NO. CRC 416-2017

That on or about 09 June 2017, within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully and willingly traded, delivered and sold zero point one zero two nine (0.1029) grams of Methylamphetamine Hydrochloride (Shabu) which is a dangerous drug, contained in a sachet marked as JSC-BB to PO2 Jefferjun Cabantuan who acted as poseur buyer in a legitimate buy-bust operation, and received from said poseur buyer marked money consisting of one thousand peso (P1,000.00) bill bearing serial number X114893 with the initials JSC on the forehead of Vicente Lim.

CONTRARY TO LAW.^[8]

CRIMINAL CASE NO. CRC 417-2017

That on or about 09 June 2017 within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully, willingly[,] knowingly had in his possession, control and custody of Methylamphetamine Hydrochloride (Shabu), a dangerous drug, contained in four (4) separate heat sealed transparent [sic] cellophane with their respective markings:

Marking	Weight	
JSC-P1	0.0870	zero point zero eight seven zero
JSC-P2	0.6543	zero point six five four three
JSC-P3	0.0545	zero point zero five four five
JSC-P4	0.0531	zero point zero [five] three one

CONTRARY TO LAW.^[9]

CRIMINAL CASE NO. CRC 418-2017

That on or about 09 June 2017, within the City of Panabo, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did

then and there, willfully, unlawfully, willingly[,], knowingly had in his possession, control and custody, one (1) tooter, an equipment, instrument, apparatus and paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing dangerous drugs into the body.

CONTRARY TO LAW.^[10]

On November 9, 2017, Sayre filed a Proposal for Plea Bargaining^[11] and manifested as follows:

Today, he wanted to plea bargain Section 5 and 11 to a lesser offense under Section 12, which carries with [it] a penalty of imprisonment of six (6) months and 1 day to four (4) years. Moreover, for Section 12, penalty of compulsory 6-month rehabilitation. These proposals are without prejudice however to the guidelines on plea bargaining yet to be released by the Supreme Court, whichever is most favorable and beneficial to the accused; x x x^[12]

Pursuant to Office of the Court Administrator (OCA) Circular No. 90-2018, adopting the Court En Banc Resolution dated April 10, 2018 in Administrative Matter (A.M.) No. 18-03-16-SC (*Adoption of the Plea Bargaining Framework in Drug Cases*), Sayre filed a Motion for Approval of Plea-Bargaining Proposal with Modification.^[13] Sayre proposed the following:

x x x x

4. That in the said *Plea-Bargaining Framework for Drug Cases*, the offense under Section 5 with quantity of *shabu* from 0.1 to 0.99 grams the same can be plea bargain under Section 12 of RA 9165 from Life Imprisonment to 6 months and 1 day to 4 years;

5. That also, the offense under Section 11 par. 3 with quantity of *shabu* from .01 gram to 4.99 grams the same can be plea bargain under Section 12 of RA 9165 from 12 years and 1 day to 20 years to 6 months and 1 day to 4 years;

6. That finally, the offense under Section 12 can now be plea bargain under Section 15 from 6 months and 1 day to 4 years to: (1) *6 months treatment and rehabilitation* (if accused admits drug use, or denies drug use but found positive after drug dependency test); or (b) *Undergo counselling program at rehabilitation center* (if accused is found negative for drug use/dependency);

7. That on September 18, 2018, Dra. Rachel Jan Inojada submitted her Drug Dependency Test (DDT) on accused Sayre and found him negative on *shabu*;

8. That in view thereof, accused Sayre is praying for the approval of his Plea-Bargaining Proposal for the offense under Sections 5 and 11 of RA 9165 to Section 12 with a penalty of 6 months and 1 day to 4 years; and

9. That however, for the offense under Section 12, the plea bargaining under Section 15 be approved with a modified penalty of "*Undergoing counselling at the rehabilitation center*" for being negative on drug use.^[14] (Italics and underscoring in the original; citations omitted)

Sayre proposed that he be allowed to file an Application for Probation for the penalty of 6 months and 1 day to 4 years considering that the maximum penalty therein is less than 6 years and that he be released from the custody of the Bureau of Jail Management and Penology City Jail upon its approval.^[15] The proposal of Sayre is summarized as follows:

Criminal Case No.	OFFENSE CHARGED		PLEA BARGAIN PROPOSED BY SAYRE PURSUANT TO ADMINISTRATIVE MATTER NO. 18-03-16-SC	
	SECTION	PENALTY	SECTION	PENALTY
CRC 416-2017	Sec. 5 Illegal Sale of Dangerous Drugs (0.1029 gram of <i>shabu</i>)	Life Imprisonment [to death] and a fine ranging from P500,000.00 to P10,000,000.00 (0.01-0.99 gram of <i>shabu</i>)	Sec. 12 Possession of Paraphernalia for dangerous drugs	Imprisonment of 6 months and 1 day to 4 years
CRC 417-2017	Sec. 11 Illegal Possession of Dangerous Drugs (0.0870 gram, 0.6543 gram, 0.0545	12 years and 1 day to 20 years and a fine ranging from P300,000.00-P400,000.00	Sec. 12 Possession of Paraphernalia for Dangerous Drugs	Imprisonment of 6 months and 1 day to 4 years

	gram, and 0.0531 gram of <i>shabu</i>)	(0.01-4.99 gram of <i>shabu</i>)		
CRC 418-2017	Sec. 12 Possession of Paraphernalia for Dangerous Drugs	6 months and 1 day to 4 years and a fine ranging from P10,000.00 to P50,000.00	Sec. 15 Use of Dangerous Drugs	Penalty of Compulsory 6-month Rehabilitation

City Prosecutor Jennifer B. Namoc-Yasol (City Prosecutor Namoc-Yasol) filed a Comment and Counter-Proposal^[16] in accordance with Department of Justice (DOJ) Circular No. 27 dated June 26, 2018, otherwise known as the "Amended Guidelines on Plea Bargaining for Republic Act No. 9165,"^[17] summarized as follows:

Criminal Case No.	OFFENSE CHARGED		COUNTER-PROPOSAL BY THE PROSECUTION PURSUANT TO DOJ CIRCULAR NO. 27	
	SECTION	PENALTY	SECTION	PENALTY
CRC 416-2017	Sec. 5 Illegal Sale of Dangerous Drugs (0.1029 gram of <i>shabu</i>)	Life Imprisonment and a fine ranging from P500,000.00 to P10,000,000.00 (0.01-0.99 gram of <i>shabu</i>)	Section 11 paragraph 3 Illegal Possession of Dangerous Drugs	Indeterminate Penalty of 12 years and 1 day to 14 years and 8 months and a fine of P300,000 ^[18]
CRC 417-2017	Sec. 11 Illegal Possession of Dangerous Drugs (0.0870 gram, 0.6543 gram, 0.0545 gram, and 0.0531 gram of <i>shabu</i>)	12 years and 1 day to 20 years and a fine ranging from P300,000.00-P400,000.00 (0.01-4.99 gram of <i>shabu</i>)	Sec. 12 Possession of Paraphernalia for Dangerous Drugs	Imprisonment Penalty of 6 months and 1 day to 4 years and a fine of P25,000.00 ^[19]
CRC 418-2017	Sec. 12 Possession of Paraphernalia for Dangerous Drugs	6 months and 1 day to 4 years and a fine ranging from P10,000.00 to P50,000.00	Plead to the crime as charged	Indeterminate Penalty of 6 months and 1 day to 4 years and a fine of P25,000.00 ^[20]

City Prosecutor Namoc-Yasol recommended that for the charge under Section 5 (Illegal Sale of Dangerous Drugs), the plea bargain prescribed in DOJ Circular No. 27 is the offense under Section 11, paragraph 3 (Illegal Possession of Dangerous Drugs) with an indeterminate penalty of twelve (12) years to fourteen (14) years and eight (8) months and a fine of P300,00.00. For the charge under Section 11 (Illegal Possession of Dangerous Drugs), the City Prosecutor recommended the plea of guilty to the offense under Section 12 (Illegal Possession of Drug Paraphernalia) with an indeterminate penalty of six (6) months and one (1) day to four (4) years and a fine of P25,000.00, as prescribed in DOJ Circular No. 27. As to the charge under Section 12 (Illegal Possession of Drug Paraphernalia), the City Prosecutor recommended that Sayre plead guilty to the crime as charged with an indeterminate penalty ranging from six (6) months and one (1) day to four (4) years and a fine of P25,000.00.^[21]

The relevant offenses and their corresponding acceptable plea bargain for each offense, pursuant to A.M. No. 18-03-16-SC, are reproduced below:

Offense Charged			Acceptable Plea Bargain		Remarks
Section	Penalty	Quantity	Section	Penalty	
Section 5. Sale, Trading, etc. of Dangerous Drugs (Methamphetamine hydrochloride or <i>shabu</i>)	Life Imprisonment to Death and fine ranging from P500,000.00 to P10,000,000.00	.01 gram to .99 grams (metamphetamine hydrochloride or <i>shabu</i> only)	Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs	6 month sand 1 day to 4 years and a fine ranging from P10,000 to P50,000	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 drug use, or denies it but is found positive after drug dependency test

				<p>a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight program if penalty is still within the range of 6 months and 1 day to 1 year may likewise be imposed.</p> <p>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. 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 Sec. 24 thereof, then the law on probation shall apply.</p>	
		1.00 gram and above (methamphetamine hydro-chloride or shabu only)	No plea bargaining allowed.		
<p>Section 11, par. 3.</p> <p><i>Possession of Dangerous Drugs</i> (Where quantity of shabu, opium, morphine, heroin, cocaine is less than 5 grams)</p>	12 years & 1 day to 20 years and fine ranging from P300,000 to P400,000	1.01 gram to 4.99 grams	Section 12. <i>Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs</i>	6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000	<p>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 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</p>

				be taken from the range of the penalty provided by law. A straight penalty is still penalty unserved. If within the range of 6 months and 1 day to 1 year may likewise be imposed.	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. 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 Sec. 24 thereof, then the law on probation shall apply.
Section 11, par. 2. <i>Possession of Dangerous Drugs</i> (Where quantity of shabu, opium, morphine, heroin, cocaine is 5 grams or more but not exceeding 10 grams)	20 years to life imprisonment and fine ranging from P400,000 to P500,000	5 grams to 9.99 grams	Section 11, par. 3. <i>Possession of Dangerous Drugs</i>	12 years and 1 day to 20 years and a fine ranging from P300,000 to P400,000 <i>N.B.:</i> 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.	
		10 grams and above	No plea bargaining allowed		

Meanwhile, the pertinent offenses of the guidelines for plea bargaining in cases involving R.A. 9165 set by the DOJ Circular No. 27 are reproduced below:

Offense Charged in Information		Acceptable Plea Bargain	
Section	Penalty	Section	Penalty
Section 5 <i>Sale, Trading, etc. of Dangerous Drugs</i> (No volume required)	Life Imprisonment to Death & Fine from Php 500k to Php 10M	Section 11, par. 3 <i>Possession of Dangerous Drugs</i> (Plea bargaining is allowed only if the drugs involved are "shabu" and/or marijuana and the quantity of "shabu" is less than 5 grams and the quantity of the	12 yrs & 1 day to 20 yrs and Fine from Php 300k to Php 400k