

EN BANC

[G.R. No. 232413 [Formerly UDK 15419], July 25, 2017]

IN THE MATTER OF THE PETITION FOR ISSUANCE OF WRIT OF *HABEAS CORPUS* WITH PETITION FOR RELIEF

**INTEGRATED BAR OF THE PHILIPPINES PANGASINAN LEGAL
AID AND JAY-AR R. SENIN, PETITIONERS, VS. DEPARTMENT OF
JUSTICE, PROVINCIAL PROSECUTOR'S OFFICE, BUREAU OF JAIL
MANAGEMENT AND PENOLOGY, AND PHILIPPINE NATIONAL
POLICE, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for the issuance of writ of *habeas corpus* with a petition for declaratory relief filed by the Integrated Bar of the Philippines (IBP) Pangasinan Chapter Legal Aid, pursuant to its purpose, as stated in "*In the Matter of the Integration of the Bar of the Philippines*," issued by the Supreme Court on January 9, 1973, and the provisions under Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the Integrated Bar of the Philippines (*Guidelines on Legal Aid*).

The petition claims that as a result of jail visitations participated in by the IBP Legal Aid Program, as well as a series of consultations with the Philippine National Police (PNP) on the extant condition of detention prisoners, it was discovered that several detention prisoners had been languishing in jail for years without a case being filed in court by the prosecutor's office and without definite findings as to the existence or non-existence of probable cause.

DOJ Issuances

The petition considers such condition of several detention prisoners as an alarming situation brought about by several Department of Justice (DOJ) issuances, namely:

1. DOJ Circular (D.C.) No. 12, series of 2012, which provided that the dismissal of all drug-related cases involving violations for which the maximum penalty is either *reclusion perpetua* or life imprisonment is subject to automatic review by the Justice Secretary whether such case has been dismissed on inquest, preliminary investigation or reinvestigation. It also stated that [t]he automatic review shall be summary in nature and shall, as far as practicable, be completed within 30 days from receipt of the case records, without prejudice to the right of the respondent to be immediately released from detention pending automatic review, unless the respondent is

detained for other causes;

2. D.C. No. 22, series of 2013, entitled Guidelines on the Release of Respondents/Accused Pending Automatic Review of Dismissed Cases Involving Republic Act (R.A.) No. 9165; and
3. D.C. No. 50, series of 2012, entitled Additional Guidelines on the Application of Article 125 of the Revised Penal Code, as Amended (RPC)^[1]

For the IBP, it is the height of injustice when innocent persons are left to suffer in jail for years without a fixed term. Contending that it is their duty to defend the Constitution and protect the people against unwarranted imprisonment and detention, the IBP is requesting the Court to act on the amendment of the Rules on Preliminary Investigation, by way of a letter, which has been forwarded to the Committee on Revision. Pending the desired amendment, however, the IBP urges the Court to act on the urgent and imperative need to release from detention those who are wrongfully imprisoned despite the absence of probable cause.

The IBP represents in this case its client, Jay-Ar Senin (*Senin*). Senin's rights were allegedly violated because he has been detained for at least eight months without any finding of probable cause or a case having been filed in court.

Senin's case started when a complaint against him and other unidentified persons was indorsed on February 9, 2015, by Police Chief Inspector Crisante Pagaduan Sadino of the San Fabian Police Station, Pangasinan to the Provincial Prosecutor's Office. He was arrested while engaged in the sale of illegal drugs during a buy-bust operation. Thereafter, he executed a waiver of the provisions of Article 125 of the RPC. After the preliminary investigation, the prosecutor resolved to dismiss the case. Pursuant to the then prevailing DOJ Circular, the case was forwarded to the DOJ for automatic review.

The IBP claims that the waiver of Article 125 of the RPC does not vest the DOJ, Provincial Prosecutor's Office (*PPO*), Bureau of Jail Management and Penology (*BJMP*), and the PNP, the unbridled right to detain Senin indefinitely subject only to the whims and caprices of the reviewing prosecutor of the DOJ. Section 7, Rule 112 of the Rules of Court explicitly provides that preliminary investigation must be terminated within 15 days from its inception if the person arrested had requested for a preliminary investigation and had signed a waiver of the provisions of Article 125.^[2] It follows, therefore, that the waiver of Article 125 must coincide with the 15-day period of preliminary investigation. The detention beyond this period violates Senin's constitutional right to liberty. The review of the investigating prosecutor's resolution has been pending with the DOJ for more than eight months. The IBP concludes that Senin must be released from detention and be relieved from the effects of the unconstitutional issuances of the DOJ.

Thus, the petition prays that the Court:

- a) declare that pursuant to A.M. No. 08-11-7-SC, the petitioner is

- exempt from the payment of filing fees;
- b) issue a writ of *habeas corpus* directing the release of Senin;
 - c) declare the aforementioned issuances of the DOJ as unconstitutional;
 - d) immediately set the case for hearing due to its urgency; and
 - e) issue a writ of *kalayaan* directing the release of all detention prisoners in a similar plight.

Department Circular No. 50

On December 18, 2015, D.C. No. 50 was issued by then Secretary of Justice (*SOJ*), now Associate Justice Alfredo Benjamin S. Caguioa of this Court. In brief, D.C. No. 50 stated that a person with a pending case for automatic review before the DOJ shall be released immediately if the review is not resolved within a period of 30 days, to wit:

9. All cases subject to automatic review shall be resolved by the Office of the Secretary within thirty (30) days from the date the complete records are elevated to this Department in order to give the concerned signatory of the review resolution sufficient time to study the case, the reviewing prosecutor to whom the case is assigned is mandated to submit his recommendation to the concerned signatory ten (10) days before the thirty (30) day deadline. The docket section of this Department is also directed to monitor compliance with the periods prescribed herein.

If the case subject of the automatic review is not resolved within thirty (30) days, then the respondent shall be immediately released from detention pending automatic review, unless the respondent is detained for other causes.

D.C. No. 50 also directed all heads of prosecution offices to immediately issue corresponding release orders in favor of respondents, whose cases are still pending automatic review before the Office of the Secretary, beyond the 30 day period, unless they are detained for other causes.

Department Circular No. 003

On January 13, 2016, however, D.C. No. 003 was issued revoking DC No. 50 and reinstating D.C. No. 012, series of 2012.

Reversal of the Order of Dismissal

Meanwhile, on February 10, 2016, the Information against Senin for Illegal Possession of Dangerous Drugs was finally filed by Prosecutor Marcelo C. Espinosa. Later, the RTC, Branch 43, Dagupan City (RTC), issued a commitment order directing Senin's detention during the pendency of the case against him.

On February 16, 2016, the IBP filed a manifestation with motion informing the Court that to their surprise, Senin signed a Motion for Issuance of Order of Release; that such motion was filed before the RTC, Branch 43, and was later on set for hearing; that to protect the interest of Senin, the IBP filed a motion to intervene in the said proceeding; that no case has been filed before the said trial court; that any action the RTC would take might pre-empt the Court in resolving this case; and that Senin remains incarcerated despite the issuance of D.C. No. 50. With all these events, the IBP prays for the issuance of an order directing BJMP to release Senin from detention unless detained for some other lawful causes.

An Amended information, dated February 22, 2016, was subsequently filed before the RTC, Branch 43.

Department Circular No. 004

On January 4, 2017, the incumbent Secretary of Justice, Vitaliano N. Aguirre II, issued D.C. No. 004, series of 2017, the pertinent provisions of which read:

In the interest of the service and pursuant to the provisions of existing laws, the dismissal of all cases whether on inquest, preliminary investigation, reinvestigation or on appeal, filed for violation of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) and involving the maximum penalty of *reclusion perpetua* or life imprisonment, shall be subject to automatic review by the Secretary of Justice.

The entire records of the case shall be elevated to the Secretary of Justice, within three (3) days from issuance of the resolution dismissing the complaint or appeal, as applicable, and the parties involved shall be notified accordingly.

Notwithstanding the automatic review, respondent shall be immediately released from detention unless detained for other causes.

This Department Circular shall apply to all pending cases and to those which have been dismissed prior to the issuance hereof, if such dismissal has not yet attained finality as of the the effectivity of this Circular.

This Department Order revokes all prior issuances inconsistent herewith and shall take effect immediately until revoked.

For strict compliance.

Position of the IBP on the effect of the amendments on the DOJ issuances

The IBP concedes that the present detention of Senin had been overrun by the issuance of D.C. No. 50, the resolution of the DOJ *reversing* the dismissal order of the PPO and the eventual filing of the February 22, 2016 Amended Information. It remains firm, however, that despite these circumstances, the dismissal of this petition is not in order as the writ of *habeas corpus* for the immediate release of Senin is but one of the three reliefs being sought from the Court. The IBP reiterates that the constitutionality of DC No. 12, series of 2012, DC No. 22, series of 2013 and DC No. 50 is still being questioned. Likewise, it emphasizes that the issuance of a writ of *kalayaan* is one of the reliefs prayed for in order to protect those similarly situated as Senin.

The IBP pleads for the Court not to dismiss the petition outright and resolve the issue on the constitutionality of the DOJ issuances in order to prevent the executive department from issuing orders which tend to violate basic constitutional rights.

It appears that the IBP is unaware of the issuance of D.C. No. 004 as no manifestation has been filed with the Court regarding the same circular.

Position of the BJMP

According to the BJMP, Senin has been confined in its facility through a valid commitment order issued by the court and cannot be released without an order directing the same. It asserts that it has not disregarded or violated any existing laws or policy at the expense of Senin's rights. The BJMP cites *Agbay v. Deputy Ombudsman*^[3] and its 2007 Revised BJMP Manual,^[4] wherein it is provided that court order is required before a prisoner can be released. It insists that the continuous detention of Senin is legal considering that the RTC has already issued a commitment order, which has not been recalled or revoked.

The BJMP avers that D.C. No. 50 does not vest it unbridled discretion to release prisoners because a court order is always required. It opines that the filing of an Information against Senin for Illegal Possession of Dangerous Drugs mooted the question on the legality of the latter's detention.

Position of the OSG

The Office of the Solicitor General (OSG) posits that the remedy of *habeas corpus* availed of by the IBP and Senin is not appropriate considering that as of February 10, 2016, the SOJ has found the existence of probable cause for the filing of information in court. For said reason, the OSG deems it unnecessary for the Court to determine the constitutionality of the DOJ issuances as the question on the legality of Senin's detention has already been put to rest. In other words, the OSG points out that the constitutional question is not the very *lis mota* of the case, thus, precluding this Court from exercising its power of judicial review.

Reply of the IBP