

## SECOND DIVISION

[ G.R. Nos. 174599-609, February 12, 2010 ]

**PACIFICO R. CRUZ, PETITIONER, VS. THE SANDIGANBAYAN (FOURTH DIVISION), OFFICE OF THE OMBUDSMAN, OFFICE OF THE SPECIAL PROSECUTOR AND SPECIAL PRESIDENTIAL TASK FORCE 156, RESPONDENTS.**

### DECISION

**ABAD, J.:**

This case is about a public prosecutor's unilateral withdrawal of a motion to drop an accused from the information after a reinvestigation by his office found no probable cause against such accused and the effect of being relieved of liability in a tax case upon the accused's criminal liability in a related case.

#### The Facts and the Case

In 2001, acting on reports of irregularities, respondent Special Presidential Task Force 156 (Task Force) investigated the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (the One-Stop Center) of the Department of Finance (DOF). The Task Force found that certain officials of the One-Stop Center had been issuing tax credit certificates (TCCs) to entities that did not earn them through tax overpayments.

According to respondent Task Force, the Diamond Knitting Corporation (DKC), a Board of Investments-registered textile manufacturer, completely shut down its operations in 1993 yet the DOF's One-Stop Center issued to it TCCs totaling P131,205,391.00 from 1994 to 1997. DKC in turn sold a number of these TCCs to Pilipinas Shell Petroleum Corporation (Pilipinas Shell) with the approval of the One-Stop Center. Pilipinas Shell then used these TCCs to pay off its excise tax obligations to the Bureau of Internal Revenue (BIR).

Believing that petitioner Pacifico R. Cruz, the General Manager of Pilipinas Shell's Treasury and Taxation Department, was a party to the fraud, respondent Task Force included him in its complaint for plunder<sup>[1]</sup> against certain officials of DKC and of the One-Stop Center<sup>[2]</sup> before respondent Office of the Ombudsman (OMB).<sup>[3]</sup>

On July 25, 2002 respondent OMB dismissed the plunder charge but caused the filing on August 7, 2002 of separate informations<sup>[4]</sup> for multiple violations of Section 3(e) of the Anti-Graft and Corrupt Practices Act against petitioner Cruz and the others with him.<sup>[5]</sup> Before being arraigned, however, Cruz sought the reinvestigation of the cases,<sup>[6]</sup> claiming that he had been unable to seek reconsideration because of the hasty filing of the informations. The Sandiganbayan granted his motion and ordered the OMB to submit a report of its reinvestigation within 60 days.<sup>[7]</sup>

After reinvestigation, on October 7, 2002 respondent Office of the Special Prosecutor (OSP) submitted a memorandum to the OMB, recommending the dropping of the charges against Cruz<sup>[8]</sup> for lack of evidence that he supplied the false documents used for processing the transfers to Pilipinas Shell of the subject fraudulently issued TCCs. The OSP found that Cruz could not have known that DKC had long stopped its business operations. Indeed, the OSP had in two similar cases<sup>[9]</sup> recommended the dropping of charges against Cruz for the same reason. Upon review, the OMB approved respondent OSP's recommendation.

Respondent Task Force sought the reconsideration<sup>[10]</sup> of respondent OSP's new stand on the case, which Cruz opposed.<sup>[11]</sup> But the OSP did not resolve the motion. Instead, on November 28, 2002 it filed a motion<sup>[12]</sup> with the Sandiganbayan, for the dropping of Cruz from the informations. Apparently, however, the Sandiganbayan sat long on this motion and did not act on it.

More than five months later or on May 9, 2003 respondent OSP, acting through Prosecutor Warlito F. Galisanao, filed a motion<sup>[13]</sup> with the Sandiganbayan to hold in abeyance action on the OSP's motion to drop petitioner Cruz from the charges. At the hearing of the motion on May 15, 2003, when neither Cruz nor his counsel was present, Prosecutor Humphrey T. Monteroso orally moved to withdraw the OSP's motion to drop Cruz from the informations. The Sandiganbayan promptly granted Monteroso's oral motion. Yet, on May 26, 2003 the OSP still filed a motion to withdraw its motion to drop Cruz from the informations. The OSP set its withdrawal motion for hearing on June 4, 2003.<sup>[14]</sup>

Meanwhile, unaware of the Sandiganbayan's May 15, 2003 order, petitioner Cruz opposed<sup>[15]</sup> Galisanao's now abandoned motion to defer action on the withdrawal of the criminal charges. On May 30, 2003 Cruz eventually received the Sandiganbayan's May 15, 2003 order<sup>[16]</sup> that already allowed the withdrawal of respondent OSP's dropping of Cruz from the informations.

On June 16, 2003 petitioner Cruz filed a motion for reconsideration<sup>[17]</sup> of the Sandiganbayan's May 15, 2003 order on the ground that he had no notice of the hearing set on that date. He also complained of lack of notice respecting the formal withdrawal motion set on June 4, 2003. Cruz also challenged Galisanao and Monteroso's authority to countermand the OMB's approval of the dropping of the charges against him.

The Sandiganbayan gave the prosecution 15 days from June 20, 2003 or until July 5, 2003 within which to comment on petitioner Cruz's motion for reconsideration. It gave the latter the same period of time to file a reply and the prosecution 10 days from receipt of the reply to file its rejoinder.<sup>[18]</sup> Surprisingly, before the various periods could play out or on July 3, 2003 Cruz received a June 4, 2003 order from the Sandiganbayan, denying Cruz's motion for reconsideration. This prompted him to file a motion seeking clarification but the Sandiganbayan never got to resolve this last motion.

At any rate, on February 10, 2004 the Sandiganbayan required Ombudsman Simeon V. Marcelo to tell the court whether or not he is upholding the action taken by his

subordinates.<sup>[19]</sup> It was Special Prosecutor Dennis M. Villa-Ignacio who affirmed the actions of Galisanao and Monteroso. He said that the prosecutors acted on verbal orders of Ombudsman Marcelo. Apparently, Ombudsman Marcelo later inhibited himself from the TCC cases and designated Villa-Ignacio to act on his behalf.<sup>[20]</sup>

On July 17, 2006 the Sandiganbayan resolved to deny petitioner Cruz's motion for reconsideration.<sup>[21]</sup> The court held that Cruz was not entitled to notice since it was the OSP's prerogative to withdraw its earlier motion to drop him from the charges. The Sandiganbayan also pointed out that Cruz ultimately had the opportunity to ventilate his objections since he filed a motion for reconsideration of the court's order granting the withdrawal. Consequently, any defect in earlier proceedings had been cured. As to Galisanao and Monteroso's lack of authority to act the way they did, the court ruled that the Special Prosecutor eventually affirmed their acts. Unsatisfied, Cruz filed the present petition for *certiorari* under Rule 65.

Meanwhile, on December 21, 2007, this Court rendered judgment in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*.<sup>[22]</sup> The BIR assessed deficiency income taxes against Pilipinas Shell, given that it used for payment the fraudulently issued TCCs subject of this case. This Court nullified the assessment, finding that Pilipinas Shell was a transferee in good faith and for value and may thus not be unjustly prejudiced by the transferor's fraud committed in procuring the transfer of those TCCs.

Petitioner Cruz filed a manifestation invoking the Court's ruling in the above tax case as *res judicata* with respect to his alleged criminal liabilities relating to the subject TCCs.

### **The Issues Presented**

Petitioner Cruz presents the following issues:

1. Whether or not the Sandiganbayan gravely abused its discretion in allowing respondent OSP to withdraw its earlier motion to drop petitioner Cruz from the criminal informations even after the OMB had approved such withdrawal on ground of lack of probable cause; and
2. Whether or not the findings of the Court in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue* that Pilipinas Shell was a transferee in good faith and for value of the TCCs in question bar the prosecution of Cruz in the criminal cases subject of this petition.

### **The Rulings of the Court**

**FIRST.** The Sandiganbayan pointed out that it was respondent OSP's prerogative, as public prosecutor, to withdraw the earlier motion it filed for the dropping of the charges against petitioner Cruz. Giving him notice of such motion, said the Sandiganbayan, was therefore not indispensable.

But respondent OSP did not ask the Sandiganbayan to drop petitioner Cruz from the charges filed in court out of pure whim or simply because the OSP changed its mind regarding his case. On motion of Cruz and upon orders of the Sandiganbayan, the

OSP conducted a reinvestigation of the case. By its nature, a reinvestigation is nothing more than a continuation of the OMB's duty to conduct a preliminary investigation for the purpose of determining probable cause against a person charged with an offense falling under its jurisdiction.

Here, after respondent OSP considered the evidence anew at reinvestigation, it ruled that such evidence did not establish probable cause against petitioner Cruz. Said the OSP in its October 7, 2002 memorandum to the OMB:

**Upon re-evaluation, a close scrutiny of the records revealed that the evidences at hand will not be sufficient to justify the inclusion of movant [Cruz] as one of the accused/co-conspirators in the above captioned cases. There is no evidence on record that movant has knowledge, consent nor participation in the preparation and submission of the falsified documents purportedly showing deliveries by PSPC to DKC of large volume of oil products and which documents were used as supporting documents in the processing for the transfer of subject TCCs from DKC to PSPC.**

**More so the allegations of movant appeared to have remained unrebutted during the entire proceedings in the Preliminary Investigation stage and as a matter of fact evidences (encashed checks and vouchers) later on gathered and attached by the Task Force 156 in their motion dated September 4, 2002 bolstered the position of herein movant. Said documents clearly showed that PSPC acquired subject TCCs thru purchase with ten (10%) discount and not with alleged supply of oil/fuel products.<sup>[23]</sup>**

Respondent OSP, therefore, recommended the dropping of petitioner Cruz's name from the charges already filed in court. And the OMB approved this recommendation. The necessary implication of this is that the OMB had, after reinvestigation, found no probable cause against Cruz. Based on its finding, therefore, the State did not have the right to prosecute him. With this result, it was a matter of duty for respondent OSP to apply with the Sandiganbayan for the withdrawal of the charges against Cruz. And this they did.

Respondent Task Force of course filed a motion for reconsideration of the new OMB resolution in the case. But the OMB implicitly denied the same when it nonetheless caused the filing of the motion to drop petitioner Cruz from the charges. The Task Force did not further pursue its remedies to oppose such dropping of charges. Respondent OSP, therefore, acted in violation of petitioner Cruz's right to due process of law when it impulsively and arbitrarily disregarded its previous finding of lack of probable cause without hearing.

And respondent OSP did not even pretend that it found new evidence that established Cruz's guilt. It offered no excuse for its turnabout. For its part, the Sandiganbayan did not bother to require the OSP to present a new finding with the OMB's approval that overruled, after appropriate hearing, the previous determination of lack of probable cause that they made.