

SECOND DIVISION

[A.M. No. 07-8-207-MTC, January 31, 2008]

RE: JUDICIAL AUDIT CONDUCTED IN THE MUNICIPAL TRIAL COURT, ASUNCION, DAVAO DEL NORTE

RESOLUTION

QUISUMBING, J.:

Before the Court is a Report^[1] dated August 14, 2007 of the Office of the Court Administrator (OCA) on the judicial audit of the Municipal Trial Court (MTC), Asuncion, Davao del Norte, conducted from May 8 to 20, 2006.

The audit team discovered two cases for preliminary investigation, docketed as Criminal Case Nos. 664^[2] and 811,^[3] archived upon Orders dated May 27, 1998^[4] and June 2, 1999,^[5] respectively, of then Acting Judge Justino G. Aventurado, now the Presiding Judge of the Regional Trial Court (RTC) of Tagum City, Davao del Norte, Branch 2. Instead of forwarding the records of the cases to the Provincial Prosecutor's Office, Judge Aventurado archived the cases on the ground that the accused in both cases could not be arrested.

On November 6, 2006, Deputy Court Administrator Reuben P. De La Cruz required Judge Aventurado to explain why he archived Criminal Case Nos. 664 and 811 and to submit his orders relative to these two cases.^[6]

In his Reply-Explanation^[7] dated December 4, 2006, Judge Aventurado humbly apologized for his mistake in archiving Criminal Case No. 664. He said that he can hardly believe his error for he knows the jurisdiction of the MTC, he, having served as a prosecutor for eight years before his appointment as MTC judge. As regards Criminal Case No. 811, Judge Aventurado averred that he was probably misled by its title and the reference to Article 302 of the Revised Penal Code, violation of which is punishable by *prision correccional* in its medium and maximum periods. He maintained that his error was not malicious. He submitted copies of the orders of Judge Dorothy P. Montejo-Gonzaga of the MTC, Asuncion, Davao del Norte, forwarding the records of said cases to the Provincial Prosecutor's Office.^[8]

Judge Aventurado prayed for consideration and said that his errors, out of the thousands of cases filed before him for preliminary investigation, showed that he is merely human. He stressed that his two errors did not cause damage to the government or the private complainants. He added that because the accused could not be arrested, the cases would likely be archived when eventually filed with the RTC.

In its report, the OCA found Judge Aventurado administratively liable, to wit:

ALL THE ABOVE CONSIDERED, and considering that apparently this is Judge Aventurado's first offense, it is most respectfully recommended that he be **FINED FIVE THOUSAND PESOS (P5,000.00)** for not having followed the regular procedure provided for by law and his apparent ignorance thereof, with a **WARNING** that the repetition of the same act will be dealt with more severely.^[9]

The OCA stated that the Court, in similar infractions, found judges administratively liable and imposed appropriate penalties. The OCA first cited the case of *Castro v. Bartolome*,^[10] where we emphasized the duty of the investigating judge after the preliminary investigation to transmit the entire records of the case to the prosecutor within ten (10) days, as mandated by the rules. There, we fined Judge Bartolome P20,000 for undue delay in transmitting the records of a case, a less serious charge under Section 9(1),^[11] Rule 140 of the Rules of Court.

The OCA also cited *Agcaoili v. Aquino*,^[12] where we imposed a fine of P5,000 on Judge Aquino for not following the regular procedure and his apparent ignorance thereof. We also stated therein that under the rules, it was Judge Aquino's duty to transmit the records of the case to the prosecutor within ten (10) days after the preliminary investigation. We said that there was no need to archive the case when the accused could not be served with the complaint.

In addition, the OCA called our attention to four other cases where the penalties we imposed varied from a fine of P2,000,^[13] P20,000^[14] and P40,000,^[15] to suspension for three months without pay.^[16]

After a careful study of the facts of this case and the cases cited by the OCA, we agree with its finding that Judge Aventurado failed to follow the regular procedure in conducting the preliminary investigation in Criminal Case Nos. 664 and 811. Indeed, Judge Aventurado should not have archived the two cases but should have forwarded their records to the Provincial Prosecutor's Office as ordained by the old rules.^[17]

We disagree, however, with the OCA's finding that Judge Aventurado is *apparently* ignorant of the rules on preliminary investigation. We cannot precipitately conclude that he is ignorant because he erred. At best, this point is a contested and unresolved factual issue. Note that Judge Aventurado said he was a prosecutor for eight years and he only erred twice in a thousand cases filed before him for preliminary investigation. On the other hand, the OCA did not specifically say in its evaluation that Judge Aventurado is ignorant of the rules on preliminary investigation, but stated in conclusion that he is apparently ignorant of said rules. Moreover, the OCA did not refute Judge Aventurado's statement.

As regards the penalty, the OCA was correct in not recommending a higher penalty such as the P20,000 fine we imposed in *Castro v. Bartolome*.^[18] Compared to *Castro*, we note that Judge Aventurado did not insist that there was no need to forward to the prosecutor the transcript or records of the preliminary investigation which would have shown his utter unfamiliarity with the rules. We also note that unlike in *Castro*, Judge Aventurado has not been previously fined for gross ignorance of the law, nor reprimanded for making untruthful statements in defending himself