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[A.M. No. RTJ-05-1952, December 24, 2008]

OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. JUDGE NORMA C. PERELLO, FORMER CLERK OF COURT LUIS C. BUCAYON II, COURT STENOGRAPHERS THELMA A. MANGILIT, CECILIO B. ARGAME, MARICAR N. EUGENIO, AND RADIGUNDA R. LAMAN AND INTERPRETER PAUL M. RESURRECCION, ALL OF THE REGIONAL TRIAL COURT, BRANCH 276, MUNTINLUPA CITY, RESPONDENTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

The instant case stemmed from the judicial audit conducted by the Office of the Court Administrator (OCA) in all seven (7) branches of the Regional Trial Court in Muntinlupa City, including Branch 276 then presided by herein respondent Judge Norma C. Perello (Judge Perello). The audit was prompted by reports of perceived irregular disposition of petitions for *habeas corpus* by the said court.

In its Memorandum[1] dated January 25, 2004 and submitted to the OCA, the audit team reported that for the period 1998-2004, a total of 219 petitions for *habeas corpus* were assigned to Branch 276, the subject matters of which are classified into (a) hospitalization; (b) custody of minors; (c) illegal possession of firearms; and (d) violation of Republic Act (R.A.) No. 6425, otherwise known as the *Dangerous Drugs Act of 1972*. The records for 22 of these cases were not presented to the audit team, while the case folders of about a hundred cases did not contain copies of the decisions of conviction. The audit team also noted a huge disparity in the number of petitions for *habeas corpus* raffled in Branch 276 as against those raffled in the other branches, which led the team to doubt if the raffle had been conducted with strict regularity considering the fact that Judge Perello was the Executive Judge that time.

The audit team likewise reported several substantive and procedural lapses relative to the disposition of *habeas corpus* cases in Branch 276, such as (a) failure of the branch clerk of court to present to the audit team the case folders of 22 petitions and to send notices/summons to the Office of the Solicitor General or the Office of the City Prosecutor; (b) lack of return of the writs issued to the officials of the Bureau of Corrections; (c) absence of certificate of detention/confinement from the Bureau of Corrections; (d) absence of copies of the judgment of conviction; (e) failure of the court stenographer to transcribe the stenographic notes and attach the transcript to the records of each case; and (f) failure on the part of the court interpreter to prepare the Minutes of the court sessions or hearings.

Finally, the audit team observed that in some of the petitions for *habeas corpus*, respondent Judge Perello erred in ordering the release of the prisoners before they

have served the full term of their sentence.

Thus, the audit team recommended to the OCA to consider the judicial audit report as an administrative complaint against (a) Judge Perello and Clerk of Court Atty. Luis Bucayon II for gross ignorance of the law, grave abuse of discretion and grave misconduct; and (b) Court Stenographers Thelma Mangilit, Cecilio Argame, Maricar Eugenio and Radigunda Laman, and Court Interpreter Paul Resurreccion for gross inefficiency.

In its Resolution dated March 2, 2005, the Court adopted the aforesaid recommendation.[2]

The OCA, through its 1st Indorsement dated September 9, 2005, directed the herein respondents to comment on the audit team's recommendations.[3]

In her Comment[4] dated October 10, 2005, Judge Perello opined that "*the Audit Team that evaluated these Habeas Corpus cases filed with this Court are probably not lawyers, hence, are not conversant with the Constitution, with jurisprudence, and the Rules on the grant of the Writ of Habeas Corpus and the retroactivity of laws*." She insisted that her decisions ordering the release of the prisoners who were serving their sentence for illegal possession of firearms and violation of the Dangerous Drugs Act were in accordance with law and jurisprudence. For those convicted of illegal possession of firearms under the old law (Presidential Decree No. 1866), she applied retroactively the provisions of the amendatory law or R.A. No. 8294,[5] pursuant to Article 22 of the Revised Penal Code which provides for the retroactive application of laws that are favorable to the accused even to those already convicted and serving sentence. Inasmuch as R.A. No. 8294 imposed the penalty of six (6) years only, it was incumbent upon her to grant the writs to those prisoners who have been imprisoned for eight (8) years already. For those convicted for violation of R.A. No. 6425, she applied the said law and not the amendatory law or R.A. No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002,* mainly because it aggravated the penalty and is therefore not favorable to them.

To refute the accusations against her, Judge Perello enumerated her credentials and qualifications and alleged that most of her decisions were upheld by the Court attesting to her competence in applying the law. She claimed that in all the petitions she granted, the prisoners therein were all cleared by the National Bureau of Investigation to have no pending cases. The Bureau of Corrections was always directed to produce the records and reason for the confinement of the concerned prisoners. If from the records, the prisoner was found to have already served more than the maximum of the imposable penalty, then she would order the release of the prisoner in open court, without fear or favor. Judge Perello asserted that she had served with utmost dedication and honesty in all her more than 40 years of government service.

For his part, Atty. Luis Bucayon II, Branch Clerk of Court, explained in his Comment[6] that while he failed to present the case folders and records of 22 petitions to the audit team at the time the audit was conducted at their branch, there was an agreement between him and the audit team that the latter could pick up these folders and records before the end of their audit. However, the audit team

failed to return to get these case records. He claimed to be baffled as to how his alleged failure to make the records available to the audit team could constitute gross ignorance of the law, grave abuse of discretion and grave misconduct. Atty. Bucayon likewise manifested that he had transferred to the Public Attorney's Office of the Department of Justice as of July 26, 2004 and was issued a clearance by the OCA.

On the other hand, Court Interpreter Paul Resurreccion averred in his Comment[7] that all petitions for *habeas corpus* have their corresponding Minutes but these were not attached to the records because the Branch Clerk of Court refused to put his remarks and findings thereon. He further claims that he always made it a point to prepare the Minutes and his co-employees could attest to this fact.

Finally, Thelma Mangilit, Cecilio Argame, Maricar Eugenio and Radigunda Laman, all Stenographers of Branch 276, submitted their Joint Comment[8] dated October 12, 2005 and Joint Supplemental Comment[9] dated October 19, 2005. According to them, Branch 276 had the heaviest case load among all the branches in Muntinlupa City. Despite this, they allegedly religiously attended the hearings and transcribed their notes thereafter. With respect to the petitions for *habeas corpus*, they saw no need to transcribe their stenographic notes as the proceedings therein were non-adversarial in nature. They prioritized those cases which were adversarial and on appeal.

In the Agenda Report[10] dated March 9, 2006, then Court Administrator Presbitero J. Velasco, Jr. submitted the following recommendations:

1. respondent Judge Norma C. Perello be FOUND GUILTY of GROSS IGNORANCE OF THE LAW AND JURISPRUDENCE and be meted the penalty of SUSPENSION for three (3) months without salary and benefit;

2. the complaint against Atty. Luis Bucayon be DISMISSED for being moot and academic;

3. respondents Court Stenographers Thelma Mangilit, Cecilio Argame, Maricar Eugenio and Radigunda Laman and respondent Court Interpreter Paul Resurreccion be FOUND GUILTY of SIMPLE NEGLECT OF DUTY and be FINED in the amount of Five Thousand Pesos (P5,000.00).[11]

The Court thereafter referred the administrative matter to Justice Conrado Molina, Consultant of OCA, for investigation, report and recommendation.[12]

On August 1, 2007, the Court required the parties to manifest their willingness to submit the case for decision on the basis of the pleadings filed.[13] All the respondents manifested that they were submitting the case for decision.

On November 21, 2007, Justice Molina submitted his report and adopted entirely the recommendations of the Court Administrator.[14]

We agree with the findings of the Court Administrator as adopted by the Investigating Justice, but modify the recommendation in regard to the penalty imposed upon Judge Perello.

It is the contention of Judge Perello that the prisoners she released were all convicted under the old law, R.A. No. 6425, and not under the new law, R.A. No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002* which imposes the penalty of life imprisonment to death regardless of the quantity of the drug involved.[15] She maintains that the provisions of R.A. No. 9165 cannot be given retroactive effect insofar as these prisoners are concerned for the main reason that it would not be favorable to them. Thus, according to Judge Perello, the provisions of R.A. No. 6425, as interpreted in the case of *People v. Simon,*[16] must be applied to the released prisoners. Citing the *Simon* case, she insisted that the maximum imposable penalty for violation of R.A. No. 6425 where the quantity involved is 750 grams or less is six (6) months only, which was the reason why she ordered the immediate release of the prisoners because they had already served two (2) years of imprisonment.

While we agree with respondent judge that R.A. No. 9165 cannot be retroactively applied to the prisoners involved in the cases audited, we, however, are not impressed with Judge Perello's justification in granting the writs. Such ratiocination on her part betrays a lack of understanding of the rule on graduation of penalties. Nowhere in the cited case of *Simon* does it state that the maximum penalty shall be six (6) months where the quantity is less than 750 grams. The *Simon* case clarified the penalty to be imposed *vis-à-vis* the quantity of the drug involved, such that *prision correccional* shall be imposed if the drug is below 250 grams; *prision mayor* if the quantity is from 250 to 499 grams; and *reclusion temporal* if the drug is from 500 to 750 grams.[17] The same case likewise declared that while modifying circumstances may be appreciated to determine the periods of the corresponding penalties, or even reduce the penalty by degrees, in no case should such graduation of penalties reduce the imposable penalty beyond or lower than *prision correccional*. [18]

The penalty of *prision correccional* is composed of three periods â”€ the *minimum* which ranges from 6 months and 1 day to 2 years and 4 months, the *medium* which is from 2 years, 4 months and 1 day to 4 years and 2 months, and the *maximum* which ranges from 4 years, 2 months and 1 day to 6 years. As found by the audit team, Judge Perello considered only the minimum period of *prision correccional* in granting the writs for *habeas corpus* such that when the prisoners had served imprisonment for a period of two (2) years, she immediately ordered their release. This is clearly erroneous because the petition for *habeas corpus* cannot be granted if the accused has only served the minimum of his sentence as he must serve his sentence up to its maximum term.[19] The maximum range of *prision correccional* is from 4 years, 2 months and 1 day to 6 years. This is the period which the prisoners must have served before their applications for writs of *habeas corpus* may be granted.

In obstinately granting the writs of *habeas corpus* even if the convicted prisoners had only served the minimum period of their sentence, Judge Perello displayed a blatant disregard of the rule on graduation of penalties as well as settled jurisprudence tantamount to gross ignorance of the law. As a trial judge, respondent is the visible representation of law and justice. Under Canon 1.01 of the Code of Judicial Conduct, she is expected to be "the embodiment of competence, integrity and independence." Judges are expected to keep abreast of developments in law

and jurisprudence.[20] He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the Rule of Law. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that would be gross ignorance of the law.[21] Judge Perello must thereby have more than a cursory knowledge of the law on graduation of penalties and the imposable penalty for violation of the Dangerous Drugs Act. Indeed, the facts obtaining in this case speak of other dubious circumstances affecting Judge Perello's integrity and competence too glaring to ignore.

Notably, the record shows that Judge Perello granted the writs of *habeas corpus* even without the pertinent copies of detention and judgment of conviction.[22] This is contrary to the provisions of Section 3(d) of Rule 102 of the Rules of Court, to wit:

> Sec. 3. *Requisites of application therefor*. - Application for the writ shall be by petition signed and verified either by the party for whose relief it is intended, of by some person in his behalf, and shall set forth:
> xxx xxx xxx
> (d) A copy of the commitment or cause of detention of such person, if it can be procured without impairing the efficiency of the remedy; xxx.

The Rules clearly require that a copy of the commitment or cause of detention must accompany the application for the writ of *habeas corpus*. Obviously, Judge Perello deviated from the guidelines laid down in Section 3(d) of Rule 102 of the Rules of Court. It must be emphasized that rules of procedure have been formulated and promulgated by this Court to ensure the speedy and efficient administration of justice. Failure to abide by these rules undermines the wisdom behind them and diminishes respect for the rule of law. Judges should therefore administer their office with due regard to the integrity of the system of law itself, remembering that they are not depositories of arbitrary power, but judges under the sanction of law.[23] Indeed, Judge Perello's stubborn unwillingness to act in accordance with the rules and settled jurisprudence shows her refusal to reform herself and to correct a wrong, tantamount to grave abuse of discretion.

Be that as it may, however, we agree with the Court Administrator that there is no merit in the charge of grave misconduct leveled against Judge Perello. For grave misconduct to exist, the judicial act complained of should be corrupt or inspired by an intention to violate the law or a persistent disregard of well-known legal rules.[24] Here, it appears that she was not motivated by any corrupt or vicious motive. As the Court Administrator puts it:

> xxx. Except for the insinuation that there has been connivance among all court staff in railroading the process of handling these cases, there was no showing that in releasing the petitioners prematurely, respondent was motivated by corrupt motives. On the contrary, respondent vehemently denies this accusation. In her comment, she stated that she protests with pain that she has always been viewed and unjustly condemned as a wrongdoer on an erroneous impression that she had benefited and had reaped riches for doing her job which she did with compassion, fairness and justice as the law and jurisprudence dictates. Indeed, if respondent judge or a court employee should be disciplined for a grave offense, the evidence against him should be competent and derived from direct