SECOND DIVISION

[A.M. NO. MTJ-06-1645 [FORMERLY A.M. OCA IPI NO. 05-1702-MTJ], August 28, 2007]

IN RE: SANDRA L. MINO V. JUDGE DONATO SOTERO A. NAVARRO, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 6, CEBU CITY.

D E C I S I O N

CARPIO MORALES, J.:

By letter of March 7, 2005[1] addressed to the Court Administrator which was received by the Office of the Court Administrator (OCA) on March 14, 2005, Sandra Mino (complainant) charged Judge Donato Sotero A. Navarro (respondent), Presiding Judge of Branch 6 of the Municipal Trial Court in Cities in Cebu City, with gross inexcusable negligence arising from his failure to issue a warrant of arrest, within the period prescribed by the Rules of Court, in Criminal Case No. 124511-R, *People of the Philippines v. Allan Arcilla,* for Attempted Homicide.

It appears that the above-said criminal case was raffled to the sala of respondent on October 21, 2003. Despite repeated requests for the issuance of a warrant for the arrest of the accused, respondent did not grant the same.

After ninety seven (97) days from the raffling of the case to his sala or on February 5, 2004, respondent issued an Order[2] declaring that on the basis of the affidavits of the offended party and his witness, "the accused may actually be charged only with Grave Threats, as there is no probable cause to believe that the accused had acted with intent to kill, not having persisted in his threat against the offended party."

Respondent accordingly ordered the remand of the record of the case to the Office of the City Prosecutor "so that the information may be amended to reflect the proper crime."[3]

To the February 5, 2004 Order of respondent, the prosecution filed on March 8, 2004 an Ex-Parte Motion for Reconsideration with Motion for Inhibition,[4] alleging that the prosecution was not given a chance to be heard before the Order was issued.

In the same Ex-Parte Motion, the Prosecution argued that amending the Information was no longer proper, the Office of the Cebu City Prosecutor having already issued a resolution "after a preliminary investigation" finding probable cause against the accused for Attempted Homicide from which no appeal, either to the Office of the Regional State Prosecutor or to the Department of Justice, was taken.[5]

The Prosecution further argued that the Order is contrary to law and jurisprudence since respondent practically conducted his own preliminary investigation of the case which he has no authority to do as it is exclusively lodged with the Office of the Prosecutor.[6]

Eighty seven (87) days from the filing on March 8, 2004 by the Prosecution of its Ex-Parte Motion or on June 3, 2004, respondent issued an Order[7] refuting the arguments of the Prosecution, but nevertheless recusing himself and leaving the resolution of the said motion "to what branch of th[e] [c]ourt the case maybe raffled," thus:

> The prosecutors making the instant motion should be thoroughly familiar with the 2000 Rules on Criminal Procedure by now that requires judges to make a determination of probable cause before issuing warrants, in effect reviewing the sufficiency of the allegations in the record of preliminary investigation filed by the Office of the City Prosecutor so that the Court may even dismiss the case outright without any motion from the accused. There is actually no basis for the Judge of this Court to recuse himself from this case.
>
> The Court is deeply disturbed by the actuations of the three prosecutors who filed the motion for inhibition, " particularly as they would insist that the Court issue a warrant for the arrest of the accused when the Court has determined that this case falls only under the rule on summary procedure, so that the issuance of a warrant is completely unnecessary. Something is not right.
>
> x x x x
>
> The Court shall *leave the resolution of the motion for reconsideration to whatever branch of this Court the case may be raffled to.*
>
> Remand the record of this case to the Clerk of Court so that it may be so raffled. (Underscoring supplied)

To complainant, respondent has been trifling with the findings of the Office of the City Prosecutor, to show a pattern of which she submitted a copy of respondent's October 12, 2004 Order[8] in another criminal case, Criminal Case No. 122800-R, *People of the Philippines v. J. Walter Palacio,* also for Attempted Homicide. In this criminal case, respondent downgraded the crime to Grave Threats and ordered the remand of the case to the Office of the City Prosecutor "for the amendment of the Information." The said Order, complainant informs, was issued forty five (45) days from the time the case was raffled to his sala.

In his Letter-Comment dated September 19, 2005,[9] respondent maintains that the determination of probable cause is no longer considered the exclusive domain of prosecutors, he justifying his February 5, 2004 Order in this wise:

> It was important for the respondent that the prosecution show clear probable cause for the crime charged because the effect of doing so would be for the respondent to issue a warrant of arrest. The liberty of the accused is at stake! As the record of preliminary investigation does

not support such a finding, respondent had no choice but to dismiss the case, ask for additional evidence, or remand the record as he did so that *the prosecution had the option of submitting additional evidence or amending the information.* This was the best course of action among the options left to the respondent.[10] (Italics in the original)

In its Report dated May 8, 2006,[11] the OCA came up with the following:

EVALUATION: Paragraph (a), Section 6, Rule 112 of the Revised Rules on Criminal Procedure, which is applicable to first level courts when the preliminary investigation was conducted by the public prosecutor, provides, thus:

SEC. 6. *When warrant of arrest may issue.* - (a) *By the Regional Trial Court.* - **Within ten (10) days from the filing of the compliant or information,** the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to [S]ection 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecution to present additional evidence **within five (5) days from notice** and the issue must be resolved by the court **within thirty (30) days from the filing of the complaint or information.** [12]

From the foregoing, the judge is required to personally evaluate the resolution of the prosecutor and its supporting evidence within ten (10) days from the filing of the complaint or information, and to forthwith issue a warrant of arrest or dismiss the case, as the evidence may warrant. In fact, a maximum period of thirty (30) days from the filing of the complaint or information was set for the court to resolve the issue on the existence of probable cause, should the prosecution be required to submit additional evidence.

Criminal Case No.124511-R was raffled to Branch 6, presided over by respondent judge, on October 21, 2003. However, it took respondent judge **ninety-seven (97) days longer than the prescribed period** to issue the questioned February 5, 2004 Order. The delay was further exacerbated when respondent **judge did not immediately rule on the Ex-Parte Motion** for Reconsideration with Motion for Inhibition filed by the prosecution on March 8, 2004. It was only on June 3, 2004, **or after almost three months** from the time the motion was filed, that he inhibited himself from the case.

On the issue of downgrading the crime charged from attempted homicide to grave threats, respondent judge **manifested ignorance of the rule mentioned above.** When the preliminary investigation was conducted by the prosecutor, the judge has three options after the filing of the information and upon evaluation of the prosecutor's resolution and its

supporting evidence. He/she may (a) dismiss the case, (b) issue a warrant of arrest or a commitment order, as the case may be, against the accused, or (c) require the prosecution to submit additional evidence to support the existence of probable cause. **Nowhere in the rule was the judge authorized to determine the proper crime** that the accused should be charged with. The options given to the judge are exclusive, and preclude him/her from interfering with the discretion of the public prosecutor in evaluating the offense charged.

x x x x

Respondent judge's clarification that his Order returning the records of the preliminary investigation to the Office of the City Prosecutor so that the information "may be amended" gave the prosecution an option to submit additional evidence does not inspire belief. Nothing in the questioned Order suggests that the prosecution may exercise that option. He could have expressly ordered the prosecution to present additional evidence in support of its earlier findings, pursuant to Section 6(a), Rule 112, Revised Rules on Criminal Procedure, had he so intended. In fact, this is not the first time that he ordered the downgrading of the crime charged. In People of the Philippines vs. J. Walter Palacio, docketed as Criminal Case No. 122800-R for attempted homicide, he also ordered the crime charged to be reduced to grave threats, and directed the prosecution to amend the information accordingly in an Order dated October 12, 2004.[13] (Italics in the original, emphasis and underscoring supplied)

The OCA, noting that respondent's actions in the two criminal cases "fell short of the standards set by the New Code of Judicial Conduct, not to mention that he [had been previously] sanctioned by this Court in two other cases,"[14] recommended that he be suspended for six (6) months without salary and benefits.

By Resolution of July 31, 2006,[15] this case was re-docketed as a regular administrative matter following which the parties were directed to manifest whether they are willing to submit the case for decision on the basis of the pleadings already filed.

Respondent, in his Manifestation of October 6, 2006, responded as follows:

2. The respondent is willing to have this case submitted for decision on the basis of the pleadings/records already submitted <u>provided the following are taken into consideration:</u>

a. The only basis for the filing of the charges in Criminal Case No. 124511-R is the affidavit of the offended party, sadly now deceased Alvin Mino, that appears in the record of preliminary investigation;

b. Only the second and third paragraphs of the affidavit of the offended party in the record of [the] preliminary investigation is relevant to the crime charged, to wit;

2. That on or about 5:30 P.M. of the same date . . . That upon going out