

SECOND DIVISION

[A.M. NO. P-07-2337 (FORMERLY A.M. OCA IPI NO. 04-2060-P), August 03, 2007]

ROLLY PENTECOSTES, COMPLAINANT, VS. ATTY. HERMENEGILDO MARASIGAN, CLERK OF COURT VI, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, KABACAN, NORTH COTABATO, RESPONDENT.

DECISION

CARPIO MORALES, J.:

Atty. Hermenegildo Marasigan (respondent), Clerk of Court VI of the Office of the Clerk of Court of the Regional Trial Court (RTC) of Kabacan, North Cotabato, stands administratively charged with grave misconduct and conduct unbecoming a public officer for the loss of a motorcycle-subject matter of a criminal case which was placed under his care and custody.

The administrative case against respondent stemmed from a sworn affidavit-complaint^[1] filed on November 11, 2004 by Rolly Pentecostes (Pentecostes), the owner of a Kawasaki motorcycle, which was recovered by members of the Philippine National Police (PNP) of M'lang, North Cotabato from suspected carnappers against whom a criminal case for carnapping, Criminal Case No. 1010, was lodged at Branch 22, RTC, Kabacan, North Cotabato.

On the order of the trial court, the chief of police of M'lang, North Cotabato turned over the motorcycle to respondent who acknowledged receipt thereof on August 1, 1995.

After the conduct of hearings to determine the true owner of the motorcycle, the trial court issued an Order^[2] of November 15, 2000 for its release to Pentecostes.

Pentecostes immediately asked respondent to release the motorcycle to him. Respondent, however, told him to wait and come back repeatedly from 2001 up to the filing of the complaint.

In his Comment^[3] filed on February 9, 2005, respondent gave the following explanation:

After the motorcycle was delivered to him by the M'lang chief of police on August 1, 1995, he requested Alex Pedroso, a utility worker, to inspect the engine, chassis, and make, after which he issued an acknowledgement receipt thereof.

He thereafter instructed Pedroso to bring the motorcycle to the Kabacan police station for which he (respondent) prepared a receipt.

He and Pedroso visited and inspected the motorcycle every time a hearing on the criminal case was conducted. When the court finally ordered the release of the motorcycle to Pentecostes on November 15, 2000, the latter refused to receive it, claiming that it was already "cannibalized" and unserviceable.

From that time on until 2003, Pentecostes harassed him, demanding that he be responsible for reconditioning the vehicle. During the latter part of 2004, upon the advice of the executive judge, he accompanied Pentecostes to the Kabacan police station only to discover that the motorcycle was missing.

As no explanation could be offered by then Kabacan police chief Nestor Bastareche for the loss, he prepared a letter-complaint requesting for assistance in the recovery of the motorcycle and for the conduct of an investigation. Pentecostes refused to sign the letter, however.

He later discovered that the turnover receipt attached to the record of the criminal case and the page of the blotter where the turnover was recorded were missing. Hence, he submitted the sworn statements of Pedroso^[4] and SPO4 Alex Ocampo^[5] who confirmed the transfer of the vehicle from his custody to that of the Kabacan chief of police.

Belying respondent's averments, Pentecostes, in his "Rejoinder,"^[6] contended as follows:

The vehicle was in good running condition when it was delivered to respondent by police operatives^[7] of M'lang.

Respondent's act of passing the blame to the PNP of Kabacan was a clear case of hand washing as the records showed that respondent was responsible for the safekeeping of the motorcycle. It was for this reason that he (Pentecostes) refused to sign the letter to the chief of police of Kabacan protesting the loss. Moreover, the police blotter of PNP Kabacan has no entry or record of the alleged turn over.

By Resolution of October 19, 2005,^[8] this Court referred the case to the Executive Judge of RTC, Kabacan, North Cotabato, for investigation, report and recommendation.

Then Executive Judge Francisco G. Rabang, Jr. of the RTC, Kabacan, North Cotabato submitted on January 16, 2006 his findings and recommendation for the dismissal of the administrative complaint against respondent.^[9]

In his report, Judge Rabang noted that Pentecostes denied any knowledge about the turnover of the motorcycle to the PNP of Kabacan.

On the evidence for the defense, the investigating judge found that the motorcycle was delivered by the PNP of M'lang, North Cotabato to respondent who in turn transferred it to the PNP of Kabacan.

To Judge Rabang, what remained an issue was the actual physical condition of the motorcycle when it was turned over to the PNP of Kabacan. The judge noted that there was no proof of Pentecostes' claim that the vehicle was "cannibalized" from

the time it was under respondent's custody until its transfer to the PNP of Kabacan.

In light of the peace and order situation in Kabacan in the late 1990s and in the early part of 2000 and the absence of a suitable courthouse then, Judge Rabang believed that respondent had made a wise decision in turning over the custody of the vehicle to the PNP of Kabacan.

To Judge Rabang's report and recommendation, Pentecostes filed a Motion for Reconsideration^[10] in which he assailed the conclusion that the motorcycle was no longer roadworthy and was already "cannibalized" when it was delivered to the office of the clerk of court from the M'lang police station.

Moreover, Pentecostes maintained that the alleged turnover of the motorcycle to the police station of Kabacan was irrelevant because the proper custodian of the vehicle was respondent who should be held responsible for its eventual loss.

The Office of the Court Administrator (OCA) found the investigating judge's recommendation to be sufficiently supported by the evidence.^[11]

The OCA thus concurred with Judge Rabang's recommendation for the dismissal of the complaint against respondent, subject to certain qualifications with respect to the physical condition of the vehicle upon its delivery to respondent and the latter's lack of authority for the turn over of the vehicle to the PNP of Kabacan.

While the investigating judge found no evidence to show the actual condition of the motorcycle at the time it was turned over to respondent, the OCA observed that the evidence presented during the investigation supported a finding that the vehicle had missing parts when it was delivered to respondent.

From the testimony of Pentecostes' witness SPO2 Servando Guadalupe, the OCA noted, the motorcycle was loaded into a service vehicle for delivery to respondent. This fact, according to the OCA, could only mean that the vehicle could not run by itself.

Although the OCA agreed with the investigating judge that the evidence sufficiently proved that the vehicle was turned over to the PNP of Kabacan where it got lost, it noted that respondent failed to ask prior authority from the trial court to transfer its custody. Only when respondent was having problems with Pentecostes did he bring the matter to the attention of the executive judge, the OCA added.

Accordingly, the OCA recommended that respondent be reminded to secure prior authority from the court before evidence is turned over to any authorized government office or agency and that he be warned to be more careful to prevent any similar incident from arising in the future.

The finding of the OCA insofar as respondent's lack of authority to transfer the motorcycle is well taken, on account of which respondent is administratively liable for simple misconduct.

It is the duty of the clerk of court to keep safely all records, papers, files, exhibits and public property committed to his charge.^[12] Section D (4), Chapter VII of the