

FIRST DIVISION

[A.M. No. MTJ-99-1231, March 17, 2004]

**ANTONIO GAMAS AND FLORENCIO SOBRIO, COMPLAINANTS, VS.
JUDGE ORLANDO A. OCO, IN HIS CAPACITY AS PRESIDING
JUDGE OF MUNICIPAL TRIAL COURT, POLOMOLOK, SOUTH
COTABATO AND PNP SPO4 WILLIE ADULACION IN HIS
CAPACITY AS PUBLIC PROSECUTOR OF MTC-POLOMOLOK,
SOUTH COTABATO, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This is a complaint for grave misconduct and gross ignorance of the law filed by complainants Antonio Gamas and Florencio Sobrio ("complainants") against Judge Orlando A. Oco ("respondent judge"), former ^[1] Presiding Judge of the Municipal Trial Court, Polomolok, South Cotabato ("MTC Polomolok") and SPO4 Willie Adulacion ("respondent Adulacion"), a "police prosecutor" in the MTC Polomolok.

The Facts

In their Complaint ("Complaint") and supporting affidavits, complainants allege that they are the accused in a case for theft ^[2] which, at the time material to this case, was pending in the sala of respondent judge. As respondent judge had issued warrants for their arrest, complainants on 3 October 1996 went to the MTC Polomolok to post bail. Complainants allege that respondent Adulacion enticed them to plead guilty to the charge, apply for probation, and thus avoid imprisonment.

Respondent Adulacion, who had allegedly prepared a draft decision embodying his suggestion, conferred with respondent judge, and handed the draft decision to respondent judge. After reading the document, respondent judge signed it, told complainants "*O, plead guilty man kamo*" ("O, you're pleading guilty"), and handed the document to a clerk. Respondent judge told the clerk to read the contents of the decision to complainants and to instruct them on what to do. The clerk read the contents of the document to complainants and asked them to sign it. Complainants signed the document upon respondent Adulacion's assurance that once the police apprehend the rest of the accused, ^[3] the police will revive the case and respondent Adulacion will present complainants as "star witnesses." Complainants later found out that what they signed was an Order ^[4] ("3 October 1996 Order") finding them guilty of theft and sentencing them each to imprisonment for six (6) months and one (1) day.

Finding the proceedings highly irregular, complainants sought the assistance of a lawyer. Upon motion of complainants' counsel, respondent judge vacated the 3 October 1996 Order, ostensibly on the ground that complainants had entered

improvident guilty pleas. Respondent judge scheduled complainants' re-arraignment on 2 February 1997.

In the present complaint, complainants contend that respondent judge is administratively liable for rendering judgment against them without the benefit of an arraignment and in violation of their right to be represented by counsel. [5]

In his Answer ("Answer"), respondent judge denied complainants' allegations regarding the alleged procedural irregularities in the issuance of the 3 October 1996 Order. According to respondent judge, the following transpired in his sala on 3 October 1996:

2. On [the] session day [of October 3, 1996,] prosecutor Willie Adulacion with two men who turned out to be complainants, Antonio Gamas and Florencio Sobrio approached me. It was Adulacion who talked. He stated that these two have long pending warrants of arrest and they cannot afford to file P10,000.00 bail. They were charged of theft of corn worth P4,500.00. x x x They were caught with two others who are their relatives hauling 3 or 4 tricycle loads of corn cabs [sic]. Adulacion said that Gamas and Sobrio asked him to propose to the judge that Sobrio and Gamas would plead guilty, but be meted the most minimum penalty, allowed probation and after which they be released [on] their own recognizance because they cannot file their bailbonds.
3. Their predicament at that moment if I cannot attend to them immediately was that Mr. Adulacion [would] have to lock them in jail because they surrendered. Gamas and Sobrio were lucky that instant because there was a lull in my proceedings so they were able to see me.
4. As soon as Adulacion ha[d] articulated his piece of talk, in the hearing distance of Gamas and Sobrio because we were face to face[,], I asked them if what Adulacion said was true and they replied yes.
5. That instant I knew that Sobrio and Gamas wanted things done instantly so they will not be locked in jail so I ordered for the records from my staff. I read thoroughly while the three waited across the table, seated.
6. I gathered from my readings that [the] tricycle drivers with their tricycles were apprehended in *flagrante delicto* carrying corn cabs [sic] right in the corn field of Dole. I asked why there were released with the tricycles inspite of this apprehension but I did not get satisfactory answer from any of the 3. x x x
7. For me to instantly respond to their plea that they be allowed to plead guilty, meted the minimum sentence, allowed probation and pending probation they be released on recognizance, they will solve their very immediate problem of being locked in jail because they had surrendered to Adulacion and they had no ready bails. Knowing the course of action they wanted, I begun discoursing on their rights as accused. I told them of their right to counsel, to be given free of charge if they cannot afford to solicit services of one, to confront the witnesses and cross examine and because they had voluntarily articulated the desire to plead guilty, I estimated to them the probable penalty. I also told them that they have [a] right to apply for probation but pending action they may be required to file bailbonds but they begged that they be allowed to

plead guilty but released pending probation proceedings.

8. After the discourse I read from them that they would like to really plead guilty and wanted instant action so that they will not be in jail. As called for by the situation I arraigned them. I read to them in the dialect they understand the accusation and informed them [of] the nature of the evidence arrayed but they pleaded guilty, always begging that they be sentenced with the most minimum penalty, allowed probation and released immediately in their recognizance.

X X X

X X X

X X X

11. [Thus], there was arraignment and that their plea of guilt was voluntary.
12. I wrote the decision in long hand in their very presence then handed it to the typist who typed it; then I read silently what the typist typed and satisfied that what I wrote was correctly typed I signed [the 3 October 1996 Order], then required my court interpreter to read the whole decision in the language they know. I looked while the interpreter was reading. They looked satisfied that what the interpreter was reading corresponded with what they proposed and what we discussed. After the reading, Gamas and Sobrio signed the decision.
13. It was I who wrote that decision, Mr. Adulacion cannot write that.
14. So it is clear that before deciding I arraigned Gamas and Sobrio upon their demand for instant solution to their predicament. Before arraignment I counselled them of their rights and I even warned them the exact penalty I will give them. There was no lawyer in attendance but the lawyer was their problem. I heard them saying that since they were caught carrying the corn, a lawyer would not have much use, moreover they expressed they have no money to pay for a lawyer. I argued that I can give them a PAO lawyer but they insisted they plead guilty so that all will get done without jailing them that instant.^[6]

Respondent judge claims that complainants assailed the validity of the 3 October 1996 Order to avoid serving their sentences as they had allegedly violated the terms of their probation by failing to report to their probation officer. Respondent judge maintains that there was no irregularity in the issuance of the 3 October 1996 Order. Respondent judge adds that he decided to set aside his ruling merely out of compassion for complainants.^[7]

We referred this matter to the Executive Judge of the Regional Trial Court of Polomolok, South Cotabato ("RTC Polomolok") for investigation, report and recommendation.

The Investigating Judge's Findings

On 7 December 2000, Executive Judge Eddie Roxas ("Executive Judge Roxas") of RTC Polomolok submitted his Report ("Report"), finding respondent judge liable for simple neglect of duty and recommending the imposition of P10,000 fine on the latter. The Report reads in pertinent parts:

The basic issues to be resolved in this case x x x are as follows:

1. Whether or not complainants waived their right to counsel;
2. Whether or not complainants were properly arraigned; and
3. Whether or not the Order dated October 3, 1996 was prepared by Prosecutor Adulacion.

To resolve the first issue, it is noteworthy to state that in all criminal prosecution[s], the accused shall be entitled to be present and defend in person and by counsel at every stage of the proceedings, that is from the arraignment to the promulgation of the judgment (Sec. 1(c), Rule 115, Rules of Court). In relation to such statutory right of the accused, the Court has been given the correlative duty to inform the accused of his right to counsel as expressly provided under Section 6 of Rule 116 of the Rules of Court. The right to be assisted by counsel is deemed so important that it has become a constitutional right and it is so implemented that under our rules of procedure it is not enough for the court to apprise an accused of his right to have an attorney, but it is essential that the court should assign one *de officio* [counsel] for him if he so desires and he is poor, or grant him a reasonable time to procure an attorney of his own.

x x x

x x x

x x x

In the case under investigation, it is clear that the herein complainants were not assisted by counsel when they were allegedly arraigned by the Respondent Judge. Nowhere in the records of the case [was it shown] that the said complainants were indeed assisted by their own counsel of choice, or a counsel *de officio* from the time they were allegedly arraigned up to the promulgation of their sentence. x x x

[S]uch fact has been admitted by the Respondent Judge, however, he alleged that the right to counsel had already been waived by the complainants after they were apprised of the said right.

While it is true that the complainants were informed of their right to have counsel, however, it is not enough that said complainants be simply informed of their right to counsel; they should also be asked whether they want to avail themselves of one and should be told that they can hire a counsel of their own choice if they desire to have one, or that one can be provided to them at their own request.

x x x

x x x

x x x

[I]t is x x clear from the investigation conducted that the herein complainants did not satisfactorily waived their right to counsel, for although they were mechanically informed and inadequately explained of the same, it's not a guaranty that they have voluntarily, knowingly and intelligently waived such right. One cannot waive a right if in the first place he does not know and understand such right. In that instance, there is no valid waiver to speak of.

X X X

X X X

X X X

With regard to the second issue, the undersigned Investigating Judge cannot be persuaded that on the very basic procedure alone, involving just the mechanical process of arraignment outlined in Section 1 of Rule 116 of the Rules of Court, there was the necessary degree of compliance by the Respondent Judge. Other considerations reveal how flawed the supposed arraignment actually was. For instance, there is no showing that the complainants were afforded with counsel, nor furnished a copy of the Amended Complaint with the list of witnesses against them in order that they may duly prepare and comply with their responsibilities.

X X X

X X X

X X X

Not frequently indeed, an accused pleads guilty in the hope of a lenient treatment, or upon a bad advice or promises of the authorities or parties of a lighter penalty should he admit guilt or express "remorse." It is the duty of the Judge, like the herein Respondent Judge, to see to it that he does not labor under these mistaken impression. Failure or omission on the part of the Respondent Judge to exercise caution against the demands of sheer speed in disposing of cases, whether voluntarily or involuntarily, should not only be censured but also condemned. [A] Court cannot, therefore, hold liberty and life forfeit, no matter how despicable the offender when effective protection for his basic rights were denied because of poverty or ignorance.

For failure of the Respondent Judge to strictly follow and observe the mandatory provisions of Rule 116 of the Rules of Court, it can therefore be gainfully said that the herein complainants were not properly arraigned last October 3, 1996.

Anent the last issue, the complainants failed to adduce sufficient evidence that it was indeed Police Prosecutor Willie Adulacion who prepared the Order dated 3 October 1996. The Respondent Judge adequately proved that it was he who wrote the subject Order duly substantiated and corroborated by the testimonies of the other witnesses. Such proof has never been controverted by the complainants. Thus, the complainants claim that it was Police Prosecutor Willie Adulacion who prepared the subject Order is without merit for [utter] lack of basis in truth and in fact.^[8]

On 31 January 2001, we referred the Report to the Office of the Court Administrator ("OCA") for evaluation, report and recommendation.

The OCA's Evaluation and Recommendation

In its Memorandum dated 11 May 2001, the OCA, while agreeing with the findings of Executive Judge Roxas, finds respondent judge liable not for mere simple neglect of duty but for gross ignorance of the law. Accordingly, the OCA recommends that respondent judge be fined P20,000. The OCA explains:

[R]espondent judge showed his ignorance not only of the scope of his authority to arraign the complainants but also of the procedure to follow in conducting an