



Republic of the Philippines
 Supreme Court
 Baguio City

CERTIFIED TRUE COPY
Wenceslao V. Lapitan
 WENCESLAO V. LAPITAN
 Division Clerk of Court
 Third Division
 MAY 27 2016

THIRD DIVISION

PROSECUTOR III LEO C. TABAO, A.M. No. P-16-3437
 [Formerly OCA IPI No. 11-3665-P]

Petitioner,

Present:

VELASCO, JR., J., *Chairperson*,
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

- versus -

SHERIFF IV JOSE P. CABCABIN,
OFFICE OF THE CLERK OF
COURT, REGIONAL TRIAL
COURT, TACLOBAN CITY,
 Respondent.

Promulgated:

April 20, 2016

Wenceslao V. Lapitan

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DECISION

PERALTA, J.:

This administrative matter stems from the letter-complaint dated 11 April 2011 filed by Deputy Prosecutor Leo C. Tabao, accusing Sheriff IV Jose P. Cabcabin of the Office of the Clerk of Court of the Regional Trial Court of Tacloban City of Abuse of Authority and Gross Irregularity in the Performance of Duties relative to Criminal Case Nos. 2009-11-537 (Violation of Section 5¹, R.A. 7610²), 2009-11-538 (Violation of Sec. 6³,

¹ Section 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

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R.A. 9208⁴) and 2009-11-539 (Violation of Sec. 4 (a)⁵ and (e)⁶, R.A. 9208), all entitled “*People of the Philippines vs. Danilo Miralles y Aguirre, et al.*”

The antecedent facts are as follows:

On January 8, 2010, the Office of the City Prosecution of Tacloban City filed the aforesaid three (3) criminal cases before the Regional Trial Court (RTC) of said city and they were raffled off to Branch 7, presided by Judge Crisologo S. Bitas.⁷

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- (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
 - (3) Taking advantage of influence or relationship to procure a child as prostitute;
 - (4) Threatening or using violence towards a child to engage him as a prostitute; or
 - (5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

² "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

³ Section 6. *Qualified Trafficking in Persons.* - The following are considered as qualified trafficking:

- (a) When the trafficked person is a child;
- (b) When the adoption is effected through Republic Act No. 8043, otherwise known as the "Inter-Country Adoption Act of 1995" and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;
- (d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
- (e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
- (f) When the offender is a member of the military or law enforcement agencies; and
- (g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS).

⁴ "Anti-Trafficking in Persons Act of 2003."

⁵ Section 4. *Acts of Trafficking in Persons.* - It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

- (a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

⁶ (e) To maintain or hire a person to engage in prostitution or pornography;

⁷ In *Jorda v. Bitas*, 718 SCRA 1 (2014), the Court found Judge Bitas guilty of gross ignorance of the law for fixing Danilo Miralles' bail and reducing the same *motu proprio*, without allowing the prosecution to present its defense, despite the fact that the accused was charged with Qualified Trafficking,

On February 2, 2011, after the prosecution had presented its witnesses, Judge Bitas issued an Order⁸ finding probable cause to hold Danilo Miralles for trial for violation of Section 4 (a) and (e) of Republic Act (RA) No. 9208, and directing him to put up a bailbond of Forty Thousand Pesos (₱40,000.00) for each of the 3 criminal cases.

On February 4, 2011, Sheriff Cabcabin issued a Certification⁹ to the effect that Miralles has voluntarily surrendered himself to the former to avail of his right to bail for his temporary liberty in connection with the said 3 cases before the RTC, Branch 7. On the same day, Judge Bitas approved the One Hundred Twenty Thousand Pesos (₱120,000.00) cash bail bond posted by Miralles before the Office of the Clerk of Court.¹⁰

In his complaint dated April 11, 2011, Prosecutor Tabao assailed the authority of Sheriff Cabcabin to issue the said certification, considering that no arrest warrant had yet been issued against Miralles, to wit:

When RTC-7 issued the Order of 02 February 2011 x x x where it found probable cause against accused MIRALLES, the court, instead of issuing the corresponding warrant of arrest against MIRALLES as required by the Rules, granted him bail in the reduced amount of ₱40,000.00 even when said accused never filed a Motion To Fix Bail much less, a Motion to Reduce Bail.

Consequently, there being no warrant of arrest against MIRALLES we then find it very intriguing and very hard to understand what the basis was of CABCABIN in entertaining MIRALLES. What was MIRALLES surrendering for when there was no arrest warrant against him? Did he verify and ask MIRALLES to show the warrant of arrest against him so he can determine the amount of bail? Was MIRALLES escorted and under police custody when he went to CABCABIN?

February 4, 2011, when MIRALLES went to surrendered (sic) to CABCABIN, is (sic) *FRIDAY*. Judge Bitas was in his Court (as shown by the fact that he approved the cash bond also on the same day). Why did CABCABIN, who is not a person in authority, allow MIRALLES to surrender to him? He should have directed MIRALLES to surrender to Judge Bitas instead of him. Judge Bitas could then have noted and certified that MIRALLES surrendered to him and is now in custody of the law – thereby legally paving the way for him to post his cash bail bond.

₱2,000,000.00 but not more than ₱5,000,000.00. The Court suspended Judge Bitas from the service for a period of three (3) months and one (1) day without pay, and warned that a repetition of a similar offense will warrant the imposition of a more severe penalty.

⁸ *Rollo*, p. 6.

⁹ *Id.* at 7.

¹⁰ *Id.* at 9.

But then again there is the unexplained situation of how can an accused person surrender himself to a judge when there is no warrant of arrest against him.¹¹

On June 21, 2011, the Office of the Court Administrator (OCA) directed Sheriff Cabcabin to Comment on the complaint of Prosecutor Tabao.¹²

In his comment dated July 14, 2011, Sheriff Cabcabin admitted that he issued the Certification dated February 4, 2011 to the effect that Miralles voluntarily surrendered himself to avail of his right to bail, but only after the said accused had posted cash bond in the total amount of ₱120,000.00 for the 3 criminal cases. He further explained that:

Accused DANILO MIRALLES initially surrendered at Branch 7 of this Court [RTC] but since the Sheriff in said branch was out of the office on official business said accused was accompanied by a personnel in Branch 7 to the Office of the Clerk of Court for the purpose of posting his bond.

It is not only the Presiding Judge in Branch 7 who requests Sheriffs in the Office of the Clerk of Court, in the absence of the branch Sheriff, to issue such certification all the Presiding Judges in Branches 6, 7, 8, 9 & 34 also require us Sheriffs to issue said Certificate of Voluntary Surrender before the bond approved by them.

Accused DANILO A. MIRALLES, voluntarily surrendered to this Court [RTC]. I was working in the Office of the Clerk of Court when he posted his cash bond. I merely issued a Certification that he voluntarily surrendered, which he truly did. The certification was required by the Presiding Judge of Branch 7 before the bond was approved. As to why accused voluntarily surrendered when there is yet no warrant of arrest, I have no knowledge anymore of this. He entered the Office of the Clerk of Court where I was at that time and then he manifested that he was surrendering and that he was going to post bail, which he did. It is a common occurrence in this Court [RTC] that accused go to the branch to voluntarily surrender in order to post his bail and upon request of the Presiding Judge concerned, the Sheriff issues a Certificate to this effect.¹³

In his Supplemental Manifestation dated July 26, 2011, Sheriff Cabcabin submitted photocopies of Orders issued by different Branches of the RTC of Tacloban City, directing him to release accused from court custody after posting their respective cash bond in order to prove that it is a common practice in the RTC to allow accused to voluntarily surrender to

¹¹ *Id.* at 4-5. (Emphasis in the original)

¹² *Id.* at 11.

¹³ *Id.* at 14.



court sheriffs for purposes of posting bail bond for their temporary liberty.¹⁴ He also admitted having no idea as to the source of authority that sheriffs have to allow accused to voluntarily surrender to them, to wit:

x x x I have just inherited this practice from my predecessors. And considering that such surrender is made upon request of the Court [RTC], I always take it as lawful and nothing unlawful at all. Because had I been advised by my superiors that such practice was irregular and therefore unlawful, I would not have definitely done it. And because of this act of mine I am really very sorry and I apologize [to] this Court [RTC] for not having been extra careful in entertaining this matter. I promise I will not repeat the same mistake.¹⁵

In a Report¹⁶ dated July 22, 2014, the Court, upon recommendation of the OCA that the charge in the complaint appears to be serious but cannot be resolved on the basis of the records due to conflicting versions presented by the parties, referred the administrative complaint to the Executive Judge of the RTC of Tacloban City, for investigation, report and recommendation.

On December 2, 2014, Executive Judge Alphinor C. Serrano conducted a hearing where the parties adopted the same evidence they submitted before the OCA.¹⁷


In his Investigation Report dated February 10, 2015, Judge Serrano found Sheriff Cabcabin guilty of Simple Irregularity in the Performance of Duties and recommended that he be fined the amount of Five Thousand Pesos (P5,000.00) with stern warning that a repetition of the same act shall be dealt with more severely.

¹⁴ *Id.* at 15-19.

¹⁵ *Id.* at 15.

¹⁶ *Id.* at 22.

¹⁷ 1. Exhibit "A" and series – Administrative Complaint of Prosecutor Tabao;
2. Exhibit "B" – Order dated February 2, 2011 of Judge Bitas;
3. Exhibit "C" – Certification dated February 4, 2011 issued by Sheriff Cabcabin;
4. Exhibit "D" – Cash bail bond receipt dated February 4, 2011 issued by Marilyn G. Padilla, Office of the Clerk of Court;
5. Exhibit "E" – Cash bail bond dated February 4, 2011 approved by Judge Bitas;
6. Exhibit "F" – Notice dated February 4, 2011 issued by Judge Bitas, informing any officer of the law that Miralles has posted cash bond in the amount of P120,000.00 in connection with the 3 criminal cases;
7. Exhibit "1" – Answer of Sheriff Cabcabin;
8. Exhibit "2" – Release Order dated January 31, 2011 issued by Judge Serrano;
9. Exhibit "3" – Release Order dated July 28, 2011 issued by Judge Salvador Y. Apurillo;
10. Exhibit "4" – Release Order dated May 25, 2011 issued by Judge Apurillo; and
11. Exhibit "5" – Release Order dated June 3, 2008 issued by Judge Apurillo.



In resolving the sole issue of whether Sheriff Cabcabin has the authority to receive the voluntary surrender of Miralles as shown in his Certification dated February 4, 2011, Judge Serrano found him liable for simple irregularity in the performance of the complained act which was not within the scope of his official functions as embodied in the Revised Manual for Clerks of Court, thus:

It is a principle in the Law of Public Officers that “an administrative officer has only such powers as are expressly granted to him and those necessarily implied in the exercise thereof. These powers should not be extended by implication beyond what may be necessary for their just and reasonable execution.” (*Kilusang Bayan vs. Dominguez*, 205 SCRA 92). Thus, every public officer is guided by law in the execution of its official function.

In order to resolve the foregoing issue, it is necessary to define what are the duties of respondent as Sheriff IV under existing laws and regulations.

Under the 2002 Revised Manual for Clerks of Court, (Chapter VI, D, 2.1.5), a deputy Sheriff IV, V and VI have the following duties:

2.1.5.1. serves and/or executes all writs and processes of the Courts and other agencies, both local and foreign;

2.1.5.2. keeps custody of attached properties or goods;

2.1.5.3. maintains his own record books on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes executed by him;

2.1.5.4. submits periodic reports to the Clerk of Court;

2.1.5.5. does related tasks and performs other duties that may be assigned by the Executive Judge and/or Clerk of Court;

The duty of a sheriff is to execute judgments and orders of a Court. Perusal of the above-quoted responsibilities pertaining to a Sheriff IV reveals that it is not one of the official duties of respondent to entertain the voluntary surrender of accused Miralles for the purpose of posting cash bond. While the said act of surrendering to respondent is not expressly mentioned, it cannot also be implied from the express duties of a Sheriff IV under the law.

Respondent in his answer justified his act by saying that he pursued such action because he only inherited such process from his predecessors. He justified further by saying that all presiding judges of Branch 6, 7, 8, 9 and 34 request him to entertain the voluntary surrender of accused in their respective Court who want to post bond.



However, had Judge Bitas or the Executive Judge issued a specific Order allowing accused Miralles to surrender to Respondent, that task would have fallen under: “*does related tasks and performs other duties that may be assigned by the Executive Judge and/or Clerk of Court.*” Failing this, and without the said Order, Respondent has no authority to receive the voluntary surrender of accused Miralles.

Respondent went beyond his official duties when he entertained the voluntary surrender of accused Miralles, without any order from Judge Bitas, the Executive Judge or the Clerk of Court. He was not mindful of his duties as a Sheriff IV. Said act amounts to a misfeasance which renders any public officer liable under the law. The evidences (Court Orders) submitted/offered by Respondent in his defense had nothing to do with the case and were therefore irrelevant. Respondent cannot escape administrative sanction by interposing his justifications that it was a common practice which he just inherited from his predecessors. The same has no merit.

Respondent having been in the government service for a long period of time should have had a clear understanding of his official duties under the law. If, indeed, it became a[n] established practice, and pursued such action upon the behest of the presiding judges of RTC Tacloban, he should have clarified the same, and secured the written order from the judge concerned, or much better, refused to perform an act not sanctioned by law.¹⁸

The Court adopts the findings of the Investigating Judge, but modifies the recommended penalty.

Section 1, Canon IV¹⁹ of the Code of Conduct for Court Personnel²⁰ states that court personnel shall at all times perform official duties properly and with diligence. Section 7 thereof also provides that court personnel shall not be required to perform any work outside the scope of their job description, viz.:

Sec. 7. Court personnel **shall not be required** to perform any work or duty **outside the scope of their assigned job description.** (Emphasis supplied)

The foregoing rules are rooted in the constitutional principle that public office is a public trust; hence, all public officers and employees, including court personnel in the Judiciary, must serve the public with utmost responsibility and efficiency.²¹ “Exhorting court personnel to exhibit the highest sense of dedication to their assigned duty necessarily precludes

¹⁸ Rollo, pp. 59-61.

¹⁹ Performance of Duties.

²⁰ A.M. No. 03-06-13-SC. Effective June 1, 2004.

²¹ *Executive Judge Apita v. Estanislao*, 661 Phil. 1, 9 (2011).

requiring them to perform any work outside the scope of their assigned job description, save for duties that are identical with or are subsumed under their present functions.”²² Diligent and proper performance of official duties thus impels that court personnel should be well aware of and duly act within the scope of their assigned duties and responsibilities.

Under 2.2.4 of Chapter VI, Volume I of the 2002 Revised Manual for Clerks of Court – which defines the general functions of all court personnel in the judiciary – the Sheriff IV is tasked with serving writs and processes of the court; keeping custody of attached properties; maintaining the record book on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes; and performing such other duties as may be assigned by the Executive Judge, Presiding Judge and/or Branch Clerk of Court. Under 2.1.5 of the same Chapter, the Deputy Sheriffs IV, V and VI are similarly tasked to serve writs and processes of the court; to keep custody of attached properties; to maintain the record book on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes; and to do related tasks and perform other duties that may be assigned by the Executive Judge and Clerk of Court.

It bears emphasis that while the sheriff may perform other tasks and duties assigned by the said Judges or Clerks of Court, the same should be “related” thereto, *i.e.*, (1) within the scope of his job description, or (2) identical with or subsumed under his present functions.

As aptly noted by the Investigating Judge, Sheriff Cabcabin’s act of entertaining the voluntary surrender of an accused in a criminal case for purposes of posting cash bail bond is neither expressly stated nor can be necessarily implied from the job description of a court sheriff. Such act is beyond the scope of his assigned job description, and is hardly identical with or is subsumed under his present duties and functions, as defined in the 2002 Revised Manual for Clerks of Court.

To justify his act of certifying the voluntary surrender of Miralles for the purpose of availing of his right to bail, Sheriff Cabcabin tries to make much of the Orders²³ of other Judges in the RTC of Tacloban City in different criminal cases.²⁴ However, while the said orders authorized him to release the concerned accused in the criminal cases after having posted sufficient bail bonds, nowhere can it be inferred therein that he was also

²² *Id.* at 9-10.

²³ *Rollo*, pp. 16-19.

²⁴ *Id.* *People v. Johan Babiano*, Criminal Case No. 2011-01-65 for Estafa; *People v. Cristina D. Arreola*, Criminal Case No. 2010-05-259 for Estafa; *People v. Perlita Lacandazo*, Criminal Case No. 2011-05-313 for Estafa; and *People v. Emmanuel Balano*, Criminal Case No. 2004-09-628 for Homicide.



authorized to accept the voluntary surrender of the accused. Contrary to his claim, there is no evidence on record to prove that Judges in other Branches of the said RTC had requested sheriffs in the Clerk of Court to issue a certificate of voluntary surrender, in the absence of their Branch Sheriffs. Neither can he invoke that it was a common practice inherited from his predecessors for a sheriff to entertain voluntary surrender of an accused without authority from the judge or clerk of court, for it is basic that ignorance of the law excuses no one from compliance therewith²⁵ and that laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.²⁶

For performing an act beyond the clear scope of his duties and responsibilities, the Court finds that Sheriff Cabcabin violated Section 1,²⁷ in relation to Section 7,²⁸ of Canon IV of the Court of Conduct of Court Personnel, and holds him liable for simple misconduct, which is a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer.²⁹ Under Section 46, D(2) of the Revised Rules on Administrative Cases in the Civil Service (RRACS),³⁰ simple misconduct is considered a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months, for the first offense; and dismissal from the service for the second offense.

Under Section 47³¹ of the RRACS, payment of fine in place of suspension is allowed when the respondent committed the offense without abusing the powers of his position or office. The same provision³² adds that

²⁵ New Civil Code, Art. 3.

²⁶ *Id.*, Art. 7.

²⁷ Sec. 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

²⁸ Sec. 7. Court personnel shall not be required to perform any work or duty outside the scope of their assigned job description.

²⁹ *Campos, et al. v. Judge Campos*, 681 Phil. 247, 254 (2012), citing *China Banking Corporation v. Janolo, Jr.*, 577 Phil. 176, 181 (2008).

³⁰ Civil Service Commission Resolution No. 11-01502, promulgated on November 18, 2011. Same as in Sec. 52(B)(2), Rule IV, of the Revised Uniform Rules on Administrative Cases in the Civil Service, Resolution No. 99-1936 dated August 31, 1999.

³¹ Section 47. *Penalty of Fine.* – The following are the guidelines for the penalty of fine:

I. Upon the request of the head of office or the concerned party and when supported by justifiable reason/s, the disciplining authority may allow the payment of fine in place of suspension if any of the following circumstances are present:


- a. When the functions/nature of the office is impressed with national interest such as those involved in the maintenance of peace and order, health and safety, education; or
- b. When the respondent is actually discharging frontline functions or those directly dealing with the public and the personnel complement of the office is insufficient to perform such function; and
- c. When the respondent committed the offense without utilizing or abusing the power of his/her position.

³² Section 47. *Penalty of Fine.* – The following are the guidelines for the penalty of fine:

payment of fine in *lieu* of suspension shall be available in less grave offenses where the penalty imposed is less than 6 months or less at the ratio of 1 day of suspension from the service to 1 day fine. In this case, the Court adopts the ₱5,000.00 fine recommended by the Investigating Judge, there being no showing that Sheriff Cabcabin abused his authority when he issued the questioned certification of voluntary surrender, and considering that he was very sorry and apologetic for not having been extra careful in the performance of his duties.³³ However, since he has filed an application for optional retirement effective at the end of December 2015, it is no longer viable to indicate that he should be sternly warned for repetition of the same act.


WHEREFORE, premises considered, the Court finds respondent Sheriff IV Jose P. Cabcabin of the Office of the Clerk of Court, Regional Trial Court, Tacloban City, guilty of Simple Misconduct, and imposes a **FINE** of Five Thousand Pesos (₱5,000.00) to be deducted from his retirement benefits. Let a copy of this decision be attached to his personal records.

SO ORDERED.

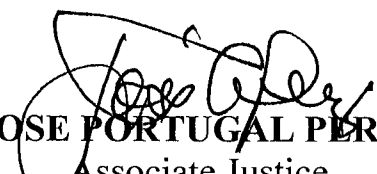


DIOSDADO M. PERALTA
Associate Justice


WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



JOSE PORTUGAL PEREZ
Associate Justice

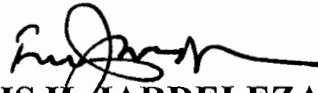


BIENVENIDO L. REYES
Associate Justice

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2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave and Light Offenses where the penalty imposed is for six (6) months or less at the ratio of one (1) day of suspension from the service to one (1) day fine; Provided, that in Grave Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstance, the conversion shall only apply to the suspension of six (6) months. Nonetheless, the remaining one (1) day suspension is deemed included therein.

³³ Rollo, p. 15.



FRANCIS H. JARDELEZA
Associate Justice

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