EN BANC

G.R. No. 262664 (MANUEL LOPEZ BASON, Petitioner, **v. PEOPLE OF THE PHILIPPINES,** Respondent).

Promulgated:

October 3, 2023

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SEPARATE CONCURRING AND DISSENTING OPINION

KHO, JR. *J.*:

I concur in the result.

I.

As a brief background, this case stemmed from two Informations filed before the Regional Trial Court of Roxas City, Capiz, Branch 18 (RTC) respectively charging petitioner Manuel Lopez Bason (petitioner) with violation of Article II, Sections 5 and 11 of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002,"[1] as amended.[2] During trial, petitioner made a plea bargaining proposal wherein he offered to plead guilty to two counts of violation of Article II, Section 12 of RA 9165 instead. The prosecution opposed said proposal, on the ground that, *inter alia*: (*a*) it had already rested its case and it has strong evidence against petitioner; and (*b*) Department of Justice (DOJ) Department Circular No. 027[3] disallows plea bargaining for Section 5 of RA 9165.[4]

The RTC approved petitioner's plea bargaining proposal over the objection of the prosecution, and accordingly, promulgated a ruling finding him guilty beyond reasonable doubt of two counts of violation of Article II, Section 12 of RA 9165.[5] Aggrieved, the Office of the Solicitor General, on behalf of the prosecution, filed a Rule 65 Petition for *Certiorari* before the

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1 Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (2002).

2 RA 10640, entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" (2014).

3 RE: AMENDED GUIDELINES ON PLEA BARGAINING FOR REPUBLIC ACT NO. 9165 OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002" (2018).

4 *Ponencia*, pp. 2–3.

5 *Id.* at 3–4.

Court of Appeals (CA).[6] After due proceedings, the CA rendered a ruling reversing and setting aside the assailed RTC ruling, and accordingly, ordering the latter court to proceed with the trial of the criminal cases against petitioner, with reasonable dispatch.[7]

The *ponencia*, mainly citing *People v. Montierro*,[8] set aside the CA ruling, and accordingly ordered the remand of the criminal cases "to the court of origin to determine whether petitioner is a recidivist, a habitual offender, known in the community as a drug addict and troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times."[9] Furthermore, the *ponencia* clarified the guidelines laid down in *Montierro*, insofar as it held that the conduct of drug dependency test is ***NOT*** a condition *sine qua non* for plea bargaining in drugs cases. Pertinent portions of the *ponencia* read:

> To be clear, a drug dependency test is not a requirement for the approval of a plea-bargaining proposal. Based on the guidelines in *Montierro*, the approval or denial of a plea-bargaining proposal is dependent primarily on the trial courts' exercise of its sound discretion taking into account the relevant circumstances, including the character of the accused[,] as well as the evidence present[ed]. The requirement for a drug dependency test becomes relevant as the trial courts are required to ensure that, after the approval of the plea-bargaining proposal, the applicant is subjected to a drug dependency test to determine if treatment and rehabilitation is required as aptly provided in A.M. No. 18-03-16-SC.
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> Even so, trial courts may still determine the propriety of a drug dependency test[,] especially considering that the prolonged period counted from the time of the arrest may render the test impractical, as in the present case. To recall, the Informations in Criminal Case Nos. C-288-16 and C-289-16 stated that the offenses were committed on July 22, 2016. On June 5, 2018, after arraignment, [petitioner] filed his proposal for plea bargaining. From July 22, [2016 until] present, a period of more than seven years has already expired. Certainly, subjecting him to a drug dependency test may no longer serve the purpose for which such test was predicated upon.
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> Moreover, to make a drug dependency test a requisite for the approval of a plea bargaining runs counter with the purpose for which plea bargaining was adopted in our jurisdiction. As emphasized in *Montierro*, the plea-bargaining mechanism in criminal procedure is geared towards achieving an efficient, speedy, and inexpensive disposition of a case. As pointed out by Associate Justice Amy C. Lazaro-Javier in her Opinion in *Montierro*, requiring a drug dependency assessment early on in the process will unnecessarily *delay* the disposition of the criminal case, precisely as

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6 *Id.* at 4.

7 *Id.* at 5.

8 *See* G.R. No. 254564 (consolidated with *Baldadera v. People*, G.R. No. 254974; and *Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions in G.R. No. 247575 and G.R. No. 250295*, A.M. No. 21-07-16-SC), July 26, 2022 [Per J. Caguioa, *En Banc*].

9 *Ponencia*, p. 12.

> there is no available data on the waiting and processing period for a drug dependency assessment. As such, a prompt disposal of the plea-bargaining proposal is necessarily important to ensure that the benefits of the mechanism as to the accused, insofar as early rehabilitation, redemption, and reintegration to society is concerned, and to the State, insofar as to the minimal use of resources, are achieved.
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> To reiterate, in approving or denying plea-bargaining proposals, trial courts have the solemn duty and ultimate responsibility to determine the applicant's entitlement thereto based on an evaluation of the latter's character or an assessment of the strength or weakness of the prosecution's evidence. The Court promulgated A.M. No. 18-03-16-SC to provide trial courts with the framework to ascertain whether the proposal to a lesser offense is aligned therein. Trial courts, if minded, may resort to a drug dependency assessment of the accused, not as [a] condition *sine qua non* for the plea bargaining but instead, *after* the approval of the proposal to ensure that the applicant undergoes treatment or rehabilitation if needed.[10]

As adverted to, I concur in the result arrived at by the *ponencia*. Nonetheless, I respectfully write this Opinion to offer my reasons behind such concurrence; and more significantly, to reiterate the points of dissent I made in my Opinion in *Montierro*.

II.

With respect to my point of concurrence with the *ponencia*, it is pointed out that during the pendency of this case, or on May 10, 2022, the DOJ issued DOJ Circular No. 018,[11] which explicitly revoked the earlier-issued DOJ Circular No. 27. A salient feature of DOJ Circular No. 18 is that the DOJ aligned its plea-bargaining framework with that of the Court, *i.e.*, A.M. No. 18-03-16-SC.[12]

In *Montierro*, the Court *En Banc*, speaking through Justice Alfredo Benjamin S. Caguioa, ruled that "[w]ith the amendments introduced in DOJ Circular No. 18, the prosecution's objection to [therein accused's] plea bargaining proposals, which was based solely on DOJ Circular No. 27, can now be considered as effectively withdrawn."[13] This notwithstanding, the Court *En Banc* ruled that the trial courts should not have hastily approved therein accused's plea bargaining proposals over the objection of the prosecution. Rather, the trial courts should have first resolved the objection of the prosecution before approving such proposals, which resolution includes a

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10 *Id.* at 10–11.

11 RE: REVISED AMENDED GUIDELINES ON PLEA BARGAINING FOR REPUBLIC ACT NO. 9165 OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002" (2022).

12 "ADOPTION OF THE PLEA BARGAINING FRAMEWORK IN DRUGS CASES" (A.M. No. 18-03-16-SC, April 10, 2018).

13 *See* G.R. No. 254564 (consolidated with *Baldadera v. People*, G.R. No. 254974; and *Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions in G.R. No. 247575 and G.R. No. 250295*, A.M. No. 21-07-16-SC), July 26, 2022 [Per J. Caguioa, *En Banc*].

determination of: (*a*) whether the evidence of guilt against therein accused is strong; and (*b*) whether therein accused are recidivists, habitual offenders, are known in the community as drug addicts and troublemakers, have undergone rehabilitation but suffered relapses, or have been charged many times. The Court *En Banc* further instructed that the presence of any of these circumstances would bar therein accused from availing of the benefits of entering into a plea bargain with the State. Given the foregoing, the Court *En Banc* concluded that the criminal cases against therein accused should be remanded to the court of origin to afford the latter an opportunity to determine whether or not therein accused are qualified to avail of the benefits of plea bargaining.[14]

It is opined that the factual milieu of the instant case is very much similar to that in *Montierro*. Given this circumstance, the Court *En Banc*'s disquisition in *Montierro* is equally applicable herein. Thus, pursuant to *Montierro*, I agree with the *ponencia* insofar as it held that: *first*, the prosecution's objection to petitioner's plea bargaining proposal, which is, in part, grounded on the contention that DOJ Circular No. 27 disallows plea bargaining for violations of Section 5 of RA 9165, had already been rendered moot by DOJ Circular No. 18; and *second*, the criminal cases against petitioner should be remanded to the RTC in order for the latter court the opportunity to ascertain whether petitioner is qualified to avail of the benefits of plea bargaining. This ascertainment will necessarily include not only a determination of whether petitioner is a recidivist, habitual offender, is known in the community as a drug addict and/or a troublemaker, has undergone rehabilitation but suffered relapses, or has been charged many times — as stated in the *ponencia*, but also a determination of whether the evidence of guilt against petitioner is strong.

III.

Notwithstanding my concurrence as above-described, I respectfully tender my dissent to the *ponencia*'s statement that the Court's Plea Bargaining Framework in Drugs Cases takes precedence over any DOJ Department Circular or other similar issuances regarding plea-bargaining in drugs cases."[15]

In this regard, I find it fitting to restate the points of dissent I made in my Opinion in *Montierro*, the pertinent portions of which read:

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14 *See id.*

15 See *ponencia*, p. 6.

It is respectfully submitted that the fact that there is no substantive law that relates to plea bargaining and that the same is found in prevailing rules of procedure ***does not necessarily mean that all aspects of plea bargaining are purely procedural in nature***, as what the *Majority* posits. In fact, the process of plea bargaining is where the two (2) great branches of government – the Executive Department and the Judicial Department – converge, where each has a significant, ***but separate***, role to play to advance the administration of justice.

As may be seen in the requisites of plea bargaining, aside from the accused and the private offended party in applicable instances (as there are crimes which have no private offended party) there are two (2) branches of government that are involved in a plea bargaining process, namely: (*a*) the Executive Department, represented by the prosecutor who is an agent of the DOJ, which in turn, acts as an alter-ego of the President – that consents to a guilty plea to a lesser offense by the accused; and (*b*) the Judicial Department, as represented by the trial court handling the criminal case – that approves or disapproves a plea bargaining arrangement agreed upon by the parties-litigants in a criminal case.

That said, and to further understand the interplay of Executive and Judicial powers insofar as plea bargaining is concerned, there is a need to delineate the powers of these great departments in relation to the prosecution of criminal cases in general.

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Pursuant to Section 17, Article VII of the 1987 Constitution which mandates the President – the bearer of Executive power – to "ensure that the laws [shall] be faithfully executed," it is the Executive Department that is tasked to uphold and enforce the law, and to ensure that all violators are brought to justice in order to uphold public order.

Necessarily, "the prosecution of crimes appertains to the [E]xecutive [D]epartment of government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators."

It is thus elementary that "in criminal cases, the offended party is the State, and 'the purpose of the criminal action is to determine the penal liability of the accused for having outraged the State with his crime . . . In this sense, the parties to the action are the People of the Philippines and the accused. The offended party is regarded merely as a witness for the state.'"

In recognition of this exercise of power by the Executive Department, Section 5, Rule 110 of the Revised Rules on Criminal Procedure, as amended by A.M. No. 02-2-07-SC, explicitly provides that "[a]ll criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor" – who as explained above, is an agent of the DOJ, and who, in turn, is considered an alter-ego of the ultimate wielder of Executive power, the President. Thus, the right to prosecute offenses ***properly belongs*** to the Executive Department. This "right to prosecute vests the prosecutor with a wide range of discretion – the discretion of whether, what and whom to

charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors."

On the other hand, the courts exercise Judicial power which includes the power "to settle actual controversies involving rights which are legally demandable and enforceable" and to "[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts[.]"In criminal cases, Judicial power is exercised by the courts by directing the orderly conduct of proceedings, and in the process, ultimately resolving the case and all incidents pertaining thereto, such as but not limited to, the main task of determining whether or not the prosecution had established beyond reasonable doubt the guilt of the accused. At all times, the courts should act as ***an impartial tribunal*** that sees to it that all rules and procedures pertaining to the proper conduct of a trial are faithfully complied with, due process is accorded with both the prosecution and defense and that any judgment rendered in connection with the criminal case is in accordance with prevailing laws, rules, and jurisprudence.

Since the conduct of plea bargaining is but a mere component of a criminal case, ***its substantive aspects***, particularly, the determination of which offenses may be plea bargained and what may constitute as proper "lesser offenses" to which a plea bargain may be made in each particular case, as well as the prosecution's giving of consent to a plea bargaining proposal, which is an essential requisite to plea bargaining, ***are part and parcel of the prosecutorial power which rightfully belongs to the prosecutors of the Executive Department***.

Plainly, these substantive matters are ***matters of policy*** which ***should not be touched by the courts***. After all, it is the prosecutors and the DOJ in general, as agents of the State, who expend State resources in prosecuting violations of the duly enacted penal laws of the country. Thus, the prosecutors must be given the discretion to determine whether or not they will continue to pursue the prosecution of an offense as charged; or if they will just save on the State's resources by agreeing to a plea bargaining deal which will ensure a conviction, albeit for a lesser offense than what was charged. On the other hand, the courts, which stand as the representatives of the Judicial Department, are tasked to ensure that all the requisites of plea bargaining are dutifully complied with.

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Contrary to what the guideline states, the approval to plea bargain ***is not entirely dependent*** to the sound discretion of the court. To reiterate, plea bargaining involves an interplay of the great powers of the Executive and Judicial Departments. It is essentially a two (2)-step process:

> **First**, once the accused submits a plea bargaining proposal, it is up to the Executive Department, through the DOJ and its prosecutors, that wields prosecutorial power, to determine whether it should give its consent to the same; and

> **Second**, once the Executive Department (and the private offended party, in proper cases) gives its consent, it is now up to the Judicial Department to ensure and verify that all requisites for a valid plea bargaining agreement are present. If in the affirmative, then the courts should approve the plea bargaining agreement; otherwise, it should be rejected.

Thus, the first step involves the discretion of the Executive Department, whose discretion in giving or not giving its consent, should be respected by the court **as a co-equal body**. As already adverted to, the involvement of the Judicial Department in the plea bargaining process is only when the accused, the handling prosecutor, and the private offended party in proper cases, have mutually agreed on a plea bargaining agreement and the same is submitted to the court where the criminal case is pending for its approval or disapproval – which is encapsulated in the second step as above-described. Thus, the plea bargaining process is a shared responsibility of the Executive and Judicial Departments.

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As also discussed above, the determination of which offenses may be plea bargained and what may constitute as "lesser offenses" to which a plea bargain may be made, as well as the giving of consent to a plea bargaining on the part of the prosecutor, are ***substantive aspects*** of plea bargaining. These are necessarily part and parcel of the prosecutorial power which rightfully belongs to the prosecutors of the Executive Department, which in turn represents the State – and the People of the Philippines for that matter. Thus, the courts ***should not be allowed to overrule the objections*** of the prosecution to any plea bargaining proposal of the accused or ***to disapprove any plea bargaining agreement*** if all the requisites of plea bargaining under the Rules are present, including in drugs cases. For the Court to allow this to happen is tantamount to the authorization of an undue and dangerous intrusion into the powers of the Executive Department.

It bears reiterating that the role of the Judicial Department in a criminal case is not to champion the cause of the State and the People of the Philippines – its critical role is ***justly limited to being an impartial tribunal*** that ensures the orderly conduct of proceedings and to adjudicate in accordance with prevailing laws, rules, and jurisprudence.

Thus, the Judicial Department should not arrogate upon itself the substantive power to determine what is an acceptable "lesser offense" to which the accused may plead guilty to in lieu of the original charge against him/her, and to approve the plea bargaining proposal over the objections of the prosecutors or to disapprove the plea bargaining agreement notwithstanding the presence of all the requisites of plea bargaining as contained in Section 2, Rule 116 of the Revised Rules on Criminal Procedure. If allowed to do so, the trial courts will effectively supplant the wisdom of the Executive Department in the prosecution of criminal cases, a responsibility imposed upon it by no less than the Constitution, thereby resulting in an impermissible overreach into the realm of the Executive Department.

> For these reasons, and after a circumspect reflection, I respectfully submit that it now appears that the Court's very own plea bargaining framework for drugs cases, *i.e.*, A.M. No. 18-03-16-SC, may have unduly overstepped into the boundaries of Executive power insofar as it provided, among others, a determination as to which violations of RA 9165 may be subject to plea bargaining, including the corresponding lesser offense to which the accused may plead guilty to.
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> At this juncture, it is acknowledged that the guidelines provided in this case were explicitly made applicable only to plea bargaining in drugs cases. However, I respectfully opine that the *Majority*'s resolution of this case might present a dangerous precedent for the court ***to intrude into substantive matters of plea bargaining of other crimes***, which to again reiterate, are purely within the domain of the Executive Department – under the mistaken notion that all aspects of plea bargaining are purely procedural in nature, particularly in the light of the explicit pronouncement in the *ponencia* that ***any plea bargaining framework that the Court may promulgate should be accorded primacy.*** With all due respect, this should not be countenanced as it is unconstitutional.[16] (Emphases, italics, and underscoring supplied)

Verily, my views in my *Montierro* Opinion, which I reiterate herein, may be synthesized as follows:

> ***First***, the process of plea bargaining involves the interplay of the powers of the Executive and Judicial Departments;
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> ***Second***, the substantive aspects of plea bargaining, which include the determination of the "lesser offenses" which an accused may plead guilty to, belongs to the Executive Department; whereas the procedural aspects of plea bargaining, which includes the determination of whether all the requisites of plea bargaining are complied with, belongs to the Judicial Department; and
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> ***Third***, for the Judicial Department to: (*a*) insist that its plea bargaining framework takes precedence over that issued by the Executive Department; (*b*) overrule the objections of the prosecution to any plea bargaining proposal of the accused; and/or (c) disapprove any plea bargaining agreement if all the requisites of plea bargaining are present, is tantamount to an undue and dangerous intrusion into the powers of the Executive Department.

ACCORDINGLY, I **VOTE** to **REMAND** the criminal cases against petitioner Manuel Lopez Bason to the court of origin to ascertain his eligibility

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[16] J. Kho, Jr., Separate Concurring and Dissenting Opinion in *People v. Montierro*, G.R. No. 254564, (consolidated with *Baldadera v. People*, G.R. No. 254974; and *Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions in G.R. No. 247575 and G.R. No. 250295*, A.M. No. 21-07-16-SC) July 26, 2022 [Per J. Caguioa, *En Banc*] citations omitted.

for plea bargaining, which includes the determination of whether: (*a*) the evidence of guilt against him is strong; and (*b*) he is a recidivist, habitual offender, is known in the community as a drug addict and/or a troublemaker, has undergone rehabilitation but suffered relapses, or has been charged many times.

ANTONIO T. KHO, JR.
Associate Justice