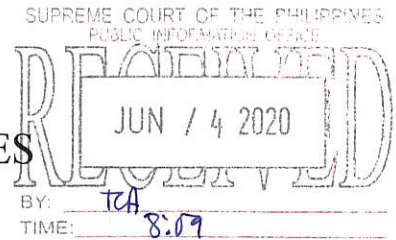




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila



SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **03 February 2020** which reads as follows:

“G.R. No. 238872 (*People of the Philippines v. Adriano Tabis y Bautista a.k.a. “Dongkoy” and Lilibeth Samon y Candare a.k.a. “Tomboy”*). – This is an appeal filed by accused-appellants Adriano Tabis y Bautista (*Tabis*) and Lilibeth Samon y Candare (*Samon*) from the Decision<sup>1</sup> dated January 26, 2018 of the Court of Appeals, Cagayan de Oro City (*CA*) in CA-G.R. CR-HC No. 01516-MIN, affirming the Decision<sup>2</sup> dated January 13, 2016 of the Regional Trial Court, Branch 4, Butuan City (*RTC*) in Crim. Case No. 15151, finding accused-appellants guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Facts

Accused-appellants Tabis and Samon were charged in an Information with the crime of illegal sale and delivery of 0.0843 gram of shabu in violation of Section 5, Article II of RA No. 9165. Upon arraignment, appellants both pleaded not guilty to the charge. Joint trial ensued.<sup>3</sup>

The prosecution presented IO1 Mark Anthony Paler (IO1 Paler) and IO1 Robin Tibayan (IO1 Tibayan) as witnesses and stipulated on the nature of the testimonies of the media witness, Bombo Radyo reporter Rey Brangan (Brangan) and Police Inspector Joel Signar (PI Signar). The prosecution presented that on July 11, 2011 at about 9:00 a.m., a walk-in confidential informant (CI) came to IO1 Paler who was at the Philippine Drug Enforcement Agency (PDEA) Regional Office informing him of the illegal drug selling by appellants at Purok 8, Sto. Niño, Barangay Ong Yiu, Butuan City. IO1 Paler relayed the report to their Deputy OIC IA III Christy Silvan

<sup>1</sup> *Rollo*, pp. 3-28. Penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo A. Camello and Walter S. Ong, concurring.

<sup>2</sup> *CA rollo*, pp. 39-52. Penned by Judge Godofredo B. Abul, Jr.

<sup>3</sup> *Rollo*, pp. 3-4.

(IA III Silvan). Upon the latter's instruction, IO1 Alex Subang, Jr., their Intelligence Chief, checked and verified that Tabis is already in their watchlist. IA III Silvan immediately formed a team to conduct a buy-bust operation.<sup>4</sup>

At around 9:30 the next morning, IA III Silvan as team leader, conducted a briefing on a possible entrapment operation. IO1 Paler was designated as the poseur-buyer while IO1 Tibayan was assigned as the arresting officer. IO1 Paler was given a P500 bill which he marked with his initials "MADP". The pre-arranged signal for a consummated sale of illegal drugs would be a missed call from IO1 Paler on IO1 Tibayan's mobile phone. Ten other agents formed the team and the CI was also with them. At about 10:15 a.m., the team was already at the area of operation. IO1 Tibayan and the rest of the team stayed at the National Highway along Montanilla Boulevard. IO1 Paler and the CI, on the other hand, walked towards the waiting shed where more or less ten people were seated, among those, per CI's information, were Tabis and Samon. When Tabis saw the CI, the former gestured for the CI to come to the waiting shed. The CI and IO1 Paler approached Tabis and Samon. The CI then introduced IO1 Paler to Tabis and Samon as the close friend mentioned in their earlier meet who was interested in buying shabu. When Samon said that they reserved their last item worth ₱500.00, IO1 Paler handed to her the ₱500.00 marked money. Tabis in turn gave IO1 Paler one sachet containing white crystalline substance. IO1 Paler then discreetly dialed IO1 Tibayan's mobile number to give a missed call. The buy-bust team arrived and arrested both accused.<sup>5</sup>

After Tabis and Samon were neutralized, IO1 Tibayan informed them of their rights. The marked money was recovered from Samon when she was searched by a female agent Janito. Thereafter, IO1 Paler made the marking "MADP-1" on the sachet of suspected shabu in the presence of IO1 Tibayan, Tabis, and Samon while photographs were taken by Janito. For security reasons, as there were already many bystanders in the area known to them as dangerous due to illegal activities, and with the crowd then hostile against the PDEA agents, they opted to proceed to their office. All the while, IO1 Paler was in possession of the subject sachet which he placed in a transparent cellophane to preserve its integrity.<sup>6</sup>

At the PDEA office, they conducted the inventory in the presence of Tabis and Samon and two witnesses, representatives from the DOJ and the media. There was no public official present because no barangay official was available at that time. The certificate of inventory signed by the witnesses and the affidavit of apprehension were then prepared. Thereafter, the request for laboratory examination and drug test on the accused were prepared. IO1 Paler, together with IO1 Tibayan and the accused Tabis and Samon, went to the PNP Crime Laboratory to submit the request and the sachet containing suspected dangerous drugs which were received by PI

<sup>4</sup> Id. at 4.

<sup>5</sup> Id. at 5-6.

<sup>6</sup> Id.

Signar. From the office to the crime laboratory, the specimen remained in IO1 Paler's possession. Upon PI Signar's examination, the sachet subject of the buy-bust marked as "MADP-1" yielded positive for the presence of methamphetamine hydrochloride or shabu. Afterwards, the specimen was marked and deposited in the custody of the court. Meanwhile, Tabis and Samon tested positive for use of shabu.<sup>7</sup>

For the defense, Tabis testified that in the morning of July 11, 2011, he was at his aunt's house at Barangay Ong Yiu to ask for money as requested by his mother. When he got the money, he bought ice candy near the waiting shed about ten meters from his aunt's house. Afterwards, several men came to the waiting shed, pointed their guns to him, instructed him not to run, and suddenly arrested him. There were about ten people in the waiting shed but he knew none of them. He also could not identify the apprehending men because they were wearing masks. A search was then made on all those who were at the waiting shed including him. The men took his necklace, cellphone, and the ₱1,000.00 bill he got from his aunt to buy medicine for his mother. The men asked for Tabis and then kicked him. Scared, the people at the waiting shed fled except for two whom he later identified as Estabaya and Samon. They were handcuffed, boarded in a van and brought to the PDEA Office. There, he was asked to lie on a table and the men hit him on his abdomen with a bat. Then he was told to get up and sit. On cross-examination, he admitted being a shabu user and that he was familiar with the said illegal drug.<sup>8</sup>

For her part, Samon testified that on July 12, 2011, she was at the house of Armando Ybasco at Sto. Niño, Purok 5, Brgy. 15, Butuan City when she received a text message from Lilia Tabigue (Lilia), the sister-in-law of Lito Tabigue (Lito) whom she contacted to demolish her house. Per Lilia's message, Lito was already on his way to meet her. She went to the waiting shed to meet Lito. While talking to Lito, armed men suddenly arrived at the area, approached her with their guns pointed at her and searched her. The men took her cellphone, silver bracelet, and ₱2,700.00 cash. Thereafter, she was boarded in a white van and brought to the PDEA office. At the office, she saw another person who was also arrested. She denied selling shabu and knowing Tabis asserting that she met him only at PDEA office.<sup>9</sup>

### RTC Ruling

The RTC rendered judgment finding Tabis and Samon guilty beyond reasonable doubt as co-principal of violation of Section 5, Article II of RA No. 9165, known as the Comprehensive Dangerous Drugs Act of 2002. It imposed on them the penalty of life imprisonment and a fine of five hundred thousand pesos (₱500,000.00) each.<sup>10</sup>

<sup>7</sup> Id. at 6-7.

<sup>8</sup> Id. at 8-9.

<sup>9</sup> Id. at 9.

<sup>10</sup> CA rollo, p. 51.

The RTC found that the prosecution was able to prove the presence of all the elements of illegal sale of *shabu* and the accused's conspiracy. As to compliance with the chain of custody rule, it declared that witness IO1 Paler was able to clearly describe in detail the facts that established a consummated buy-bust operation and the legal justification for the conduct of inventory at their office. It also gave credence to the testimonial evidence of the prosecution which was strongly corroborated by its documentary exhibits. Thus, greater weight was given to the positive testimonies of the prosecution witnesses than to the denial and planting of evidence of the accused.<sup>11</sup>

### CA Ruling

The CA affirmed the decision of the RTC and upheld the conviction of accused-appellants for violating Section 5, Article II of RA No. 9165.<sup>12</sup>

On the accused-appellants' contention as to the absence of proof of proper verification by the PDEA Intelligence Chief, the CA held that there was a valid buy-bust and arrest of the appellants even without the verification report as it is not a requirement for a legitimate buy-bust operation. Failure to verify the information reported by the CI or the lack of surveillance on the accused, according to it, is inconsequential as long as the informant is with the authorities during the operation, as in this case. Besides, the result of the by-bust outweighs any unverified report for accused-appellants were caught in *flagrante delicto*. On the issue as to the integrity and evidentiary value of the drugs seized from the accused-appellants, the CA observed that it was raised for the first time on appeal. The neglect to timely raise it during trial, according to it, is fatal to their case. Moreover, the CA declared that the prosecution was able to sufficiently prove the integrity and evidentiary value of the *corpus delicti* and the links in the chain of custody were adequately established. Finally, the CA struck down accused-appellants' defense of denial, frame-up and alibi as they are inherently weak, being based on their testimonies alone.<sup>13</sup>

Hence, this appeal praying for the acquittal of accused-appellants Tabis and Samon.

### The Court's Ruling

The appeal is meritorious.

For a successful prosecution of illegal sale of dangerous drugs under Section 5, Article II of RA No. 9165, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the

---

<sup>11</sup> Id. at 46-51.

<sup>12</sup> *Rollo*, p. 27.

<sup>13</sup> Id. at 11-27.

payment.<sup>14</sup> Further, the following essential requisites must also be established: (1) proof that the transaction or sale took place, and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.<sup>15</sup> It is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.<sup>16</sup>

Section 21 of the Comprehensive Dangerous Drugs Act, as amended by RA No. 10640, provides:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof. **Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable,** in case of warrantless seizures: **Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.**
- (2) **Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, the same shall be submitted to the PDEA Forensic Laboratory** for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: **Provided, That when the volume of dangerous drugs, plant sources of**

<sup>14</sup> *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52, citing *People v. Sumili*, 753 Phil. 342, 348 (2015).

<sup>15</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 500; citing *People v. Morales*, 630 Phil. 215, 228 (2010).

<sup>16</sup> *People v. Barrion*, G.R. No. 240541, January 21, 2019.

dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification.<sup>17</sup> (Emphases supplied)

The above-quoted provision requires that physical inventory and photograph of the seized item be made immediately after confiscation. It, however, allows such inventory to be conducted at the nearest police station or at the nearest office of the apprehending team whichever is practicable. In this case, the conduct of the inventory at the PDEA office, instead of the crime scene or nearest police station may be justified for security reasons as testimonial evidence demonstrates that the crime scene was identified as hostile area in terms of drug cases. As found by the CA, the conduct of the inventory at the PDEA office was the most rational thing to do considering the circumstances at that time. Thus, as held in *People v. Barrion*,<sup>18</sup> the failure to immediately make the inventory of the confiscated item at the place of arrest neither renders it inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of physical inventory at the nearest police station or office of the apprehending team is sufficient compliance with the rules.

Section 21, however, further requires that the said inventory and photography be done **in the presence of the accused or the person from whom such item was confiscated or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof. The three (3) witness rule, prior to the amendment of RA No. 9165 by RA No. 10640,<sup>19</sup> applies in this case.

Although not raised by the accused-appellants, the Court notes that the inventory was conducted with only two (2) witnesses from the DOJ and the media, in the absence of elected public official. It must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, and revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>20</sup>

<sup>17</sup> *People v. Que*, supra note 15, at 501-503.

<sup>18</sup> G.R. No. 240541, January 21, 2019.

<sup>19</sup> 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," approved on July 15, 2014.

<sup>20</sup> *People v. Miranda*, supra note 14, at 52; *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 368.

The law requires the presence of an elected public official, as well as representatives from the DOJ and the media to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case.<sup>21</sup> Minor deviations, however, may be excused in situations where a justifiable reason for non-compliance is explained. In this case, IO1 Paler merely testified that without giving any reason, none of the barangay officials heeded the invitation when their presence as witnesses was requested by the personnel in-charge of the PDEA office.<sup>22</sup> In supporting his testimony, IO1 Tibayan, on the other hand, stated that there was no public official present because no barangay official was available at that time.<sup>23</sup> There was no showing that they exerted genuine and sufficient efforts to secure the presence of such witness. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of their arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>24</sup> Thus, considering the police officers unjustified deviation from the prescribed procedure under Section 21, the integrity and evidentiary value of the illegal drugs seized from the appellants are put into question.

In their Supplemental Brief,<sup>25</sup> accused-appellants maintain that IO1 Paler did not testify how he preserved the identity and integrity of the *corpus delicti*. They also stress that the buy-bust operation did not follow the second and third links in the chain of custody. Further, they underscore the forensic chemist's failure to testify on how they preserved the identity and integrity of the *corpus delicti*.

The CA held that the issues challenging the safekeeping of the subject sachet of *shabu* by IO1 Paler or its turnover to the investigator or even the handling thereof in the crime laboratory, should have been raised during trial instead of raising the same for the first time on appeal. According to it, belatedly raised matters cannot aptly be entertained by the Court because as there can be no way of ascertaining the prosecution's countervailing evidence thereto because the trial has already ended. Thus, concluding that accused-appellants' failure to timely raise the said issues is fatal to their case.<sup>26</sup>

The CA was incorrect.

<sup>21</sup> *People v. Crispo*, id. at 375.

<sup>22</sup> *Rollo*, p. 6.

<sup>23</sup> See id. at 7.

<sup>24</sup> *People v. Barrion*, supra note 16, citing *People v. Crispo*, supra note 20, 376-377.

<sup>25</sup> *Rollo*, pp. 41-51.

<sup>26</sup> *CA rollo*, p. 91.

As already stated, an appeal in criminal cases throws the whole case open for review by the appellate court. In as much as compliance with the procedure under Section 21 is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the trial court, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused and, perforce, overturn a conviction.<sup>27</sup>

On the appellants' contention that there was a break in custody of the confiscated sachet because there was no turnover of the illegal drug seized from the apprehending to the investigating officer.

The links that must be established in the chain of custody of the confiscated item are: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>28</sup> In this case, the prosecution failed to prove the second link in the chain of custody. There was no testimony from the prosecution witnesses as to the turnover of the seized item from IO1 Palar to the investigating officer. There was also no showing that IO1 Palar was also the investigating officer. Again, the Court cannot agree with the CA's finding that the evidentiary value of the seized drugs was preserved even without the second link.

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents. In *People v. Remigio*,<sup>29</sup> the Court noted the failure of the police officers to establish the chain of custody as the apprehending officer did not transfer the seized items to the investigating officer.<sup>30</sup> The apprehending officer kept the alleged *shabu* from the time of confiscation until the time he transferred them to the

<sup>27</sup> *People v. Miranda*, supra note 14, at 62.

<sup>28</sup> *People v. Que*, supra note 15, at 503, citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

<sup>29</sup> 700 Phil. 452 (2012).

<sup>30</sup> *Id.* at 469.



forensic chemist. The deviation from the links in the chain of custody led to the acquittal of the accused in the said case.<sup>31</sup>

Finally, on the alleged failure of the forensic chemist to testify as to the preservation of the identification and integrity of the seized item.

As a rule, the police chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned.<sup>32</sup> Here, although the forensic chemist PI Signar was presented in court and stipulations were made in relation to the tests he made on the specimen which yielded positive for shabu, and that the brown envelope containing the sachet from the buy-bust marked "MADP-1" and marked as Exhibit "J-1" was adduced by him, however, no stipulations were made and PI Signar failed to testify on how he kept the identity and integrity of the specimen intact.

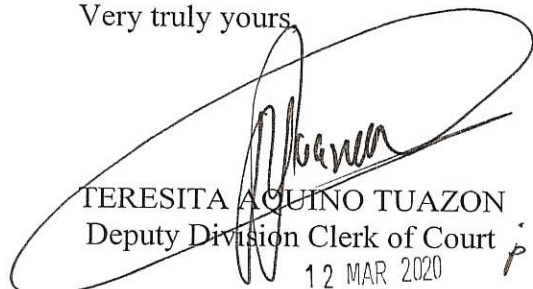
**WHEREFORE**, the appeal is **GRANTED**. The Decision dated January 26, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01516-MIN, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Adriano Tabis y Bautista a.k.a. "Dongkoy" and Lilibeth Samon y Candare a.k.a. "Tomboy" are **ACQUITTED** of the crime charged.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Adriano Tabis y Bautista a.k.a. "Dongkoy" and Lilibeth Samon y Candare a.k.a. "Tomboy", unless they are being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

**SO ORDERED.** *Hernando, J., on official leave.*"

Very truly yours

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court  
12 MAR 2020 p 3/12

<sup>31</sup> *People v. Dahil*, 750 Phil. 212, 235 (2015).

<sup>32</sup> *People v. Pajarin*, 654 Phil. 461, 466 (2011).

OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

PUBLIC ATTORNEY'S OFFICE (reg)  
Special & Appealed Cases Service  
2<sup>nd</sup> Floor, BJS Building  
Tiano Brothers cor. San Agustin Streets  
9000 Cagayan de Oro City

ADRIANO TABIS y BAUTISTA a.k.a. "Dongkoy" (reg)  
Accused-Appellant  
c/o The Superintendent  
Davao Prison and Penal Farm  
Dujali, Davao del Norte

THE SUPERINTENDENT (reg)  
Davao Prison and Penal Farm  
Dujali, Davao del Norte

THE SUPERINTENDENT (reg)  
Correctional Institution for Women- Mindanao  
Juan Acenas Sub-Colony,  
Sto. Tomas, Davao del Norte

LILIBETH SAMON y CANDARE (reg)  
Accused-Appellant  
c/o The Superintendent  
Correctional Institution for Women-Mindanao  
Juan Acenas Sub-Colony,  
Sto. Tomas, Davao del Norte

THE DIRECTOR (x)  
Bureau of Corrections  
1770 Muntinlupa City

JUDGMENT DIVISION (x)  
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)  
LIBRARY SERVICES (x)  
[For uploading pursuant to A.M. No. 12-7-1-SC]

OFFICE OF THE CHIEF ATTORNEY (x)  
OFFICE OF THE REPORTER (x)  
Supreme Court, Manila

COURT OF APPEALS (reg)  
Mindanao Station  
Cagayan de Oro City  
CA-G.R. CR H.C. No. 01516-MIN

*Please notify the Court of any change in your address.*  
GR238872. 02/03/20(92)URES

AM/KV