



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **May 14, 2021** which reads as follows:*

“G.R. No. 235602 (*Angelito Obedencio Martho, Jr. v. People of the Philippines*).

This appeal by *certiorari*¹ seeks to reverse and set aside the April 24, 2017 Decision² and October 10, 2017 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01427-MIN. The CA affirmed with modification the June 3, 2015 Joint Decision⁴ of the Regional Trial Court (RTC), Branch 42, of Medina, Misamis Oriental in Criminal Case Nos. 1941-M(2012) and 1942-M(2012), finding Angelito Obedencio Martho, Jr. (*petitioner*) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

Antecedents

In two (2) separate Informations,⁵ petitioner was charged with Illegal Possession and Illegal Sale of Dangerous Drugs under Secs. 5 and 11, respectively, of Art. II of R.A. No. 9165, to wit:

Criminal Case No. 1941-M(2012)

That on or about the 5th day of June 2012 at around 6:00 o'clock in the evening more or less, at Sitio Talisay, Baukbauk, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without lawful authority did then and there, willfully, unlawfully and feloniously

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¹ *Rollo*, pp. 35-47.

² *Id.* at 49-61; penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Perpetua T. Atal-Paño, concurring.

³ *Id.* at 63-64.

⁴ *Records*, pp. 235-252; penned by Presiding Judge Judy A. Sia-Galvez.

⁵ *Rollo* p. 50.

have in his possession and control four (4) heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride (shabu), a dangerous drug in an aggregate weight of .04 gram.

CONTRARY TO LAW.⁶

Criminal Case No. 1942-M(2012)

That on or about the 5th day of June, 2012 at around 6:00 o'clock in the evening, more or less, at Sitio Talisay, Baukbauk, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without lawful authority did then and there, willfully, unlawfully and feloniously sell, trade, deliver and give away to the poseur-buyer, during a buy-bust operation after receiving the buy-bust money of one (1) pc. ₱1,000.00 bill bearing Serial No. LY124252, two (2) small heat-sealed transparent plastic sachets each containing 0.01 gram, or a total of 0.02 gram of Methamphetamine Hydrochloride (shabu), a dangerous drug.

CONTRARY TO LAW.⁷

During arraignment, petitioner pleaded not guilty to the charges. Thus, trial on the merits ensued.⁸

Evidence for the Prosecution

The prosecution presented as witnesses Intelligence Officer I Emil C. Ancheta (*IO1 Ancheta*), Chemist III Dina Mae S. Unito (*Chemist Unito*), Investigation Agent III Ariel L. Escudero (*IA3 Escudero*), Barangay Kagawad Edgar Uayan (*Kagawad Uayan*), and Rey Labita (*Labita*).⁹

On June 5, 2012, a confidential informant (*CI*) reported to Intelligence Officer II Vincent Cecil Orcales (*IO2 Orcales*) of the Philippine Drug Enforcement Agency (*PDEA*) about the drug trade activities of petitioner at Talisay, Bauk-Bauk, Balingoan, Misamis Oriental. A buy-bust team was formed, with IO1 Ancheta as the designated poseur-buyer and IA3 Escudero as arresting and backup officer. IO1 Ancheta was given a One Thousand Peso (₱1,000.00)-bill as buy-bust money, which was recorded by Labita in the PDEA blotter.¹⁰

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⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id. at 50-51.

Thereafter, the buy-bust team proceeded to the target area. The CI sent a text message to petitioner to order *shabu* from the latter. Upon confirmation by petitioner of the order *via* text message, IO1 Ancheta and the informant proceeded to an area near the Port of Balingoan. As they approached the meeting place, IO1 Ancheta saw a man, whom he later identified as petitioner, working on a motorcycle. Petitioner nodded to the informant who informed him that IO1 Ancheta was the person interested to buy ₱1,000.00 worth of *shabu*. Petitioner reached inside his right pocket and brought out a folded white tissue paper, from which he took out two (2) plastic sachets containing white crystalline substance. Petitioner gave the plastic sachets to IO1 Ancheta who, in turn handed him the marked ₱1,000.00-bill. While IO1 Ancheta was inspecting the contents of the plastic sachet, petitioner went inside his house. Convinced that the sachets contained *shabu*, IO1 Ancheta executed the pre-arranged signal, which caused the buy-bust team to rush to the scene.¹¹

Upon his arrival at the scene of the crime, IA3 Escudero introduced himself to petitioner as a PDEA agent. While frisking petitioner, IA3 Escudero recovered the ₱1,000.00-bill from the right pocket of petitioner's pants. IA3 Escudero then saw petitioner throw a folded tissue paper on the ground. IA3 Escudero picked up the tissue paper, unfolded it, and recovered therefrom four (4) more plastic sachets containing white crystalline substance. Thereafter, *Kagawad* Uayan arrived to witness the inventory of the seized items. IO1 Ancheta marked the sachets he bought from petitioner with "1Ancheta" and "2Ancheta" while IA3 Escudero marked the four plastic sachets he recovered from petitioner with "Escudero-1," "Escudero-2," "Escudero-3," and "Escudero-4." After the marking and inventory at petitioner's house, IO1 Ancheta placed the two sachets inside his pocket, proceeded to the PDEA office, and placed the two sachets inside his locker. On the other hand, IA3 Escudero placed the four recovered sachets inside his pocket and only took out the same upon reaching their office to secure it inside his own locker.¹²

At around 7:00 a.m. of June 6, 2012, IO1 Ancheta and IA3 Escudero delivered the six (6) plastic sachets to Chemist Unito. Chemist Unito marked the sachets and conducted a laboratory examination upon the same. In Chemistry Report No. PDEA-DD-

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¹¹ Id. at 51.

¹² Id. at 51-52

2012-027, Chemist Unito reported that the contents of the six plastic sachets were all positive for *shabu*.¹³

Evidence for the Defense

The defense presented petitioner, Vivena Martho (*Vivena*), *Kagawad* Alberto Santos Jr. (*Kagawad Santos*), Dexter Sevilla (*Dexter*), Alyssa Gene Santos (*Alyssa*), and Queenne Jane Martho (*Queenne*).¹⁴

Petitioner testified that he was at *Kagawad Santos*' house on June 5, 2012 at around 5:45 p.m. He was lying down on a sofa when a van suddenly stopped in front of the house. Three (3) men alighted from the van, approached petitioner, and asked him if his name was "*Taloy*." The men proceeded to frisk and handcuff petitioner when he answered in the affirmative. Petitioner was thereafter brought to his own house. While inside the house, petitioner heard someone shout that they had found *shabu*. Petitioner immediately stood up to protest and said that the three men had planted the *shabu*. *Kagawad Uayan* arrived shortly thereafter to witness the marking and inventory. Petitioner denied IO1 Ancheta's claim that a marked ₱1,000.00-bill was found in his possession.¹⁵

Dexter, Alyssa, and Queenne are petitioner's nephew and nieces. They executed a Joint Affidavit and testified on behalf of petitioner. Dexter claimed that he saw one PDEA officer, who carried a plastic container, intentionally drop plastic sachets containing white crystalline substance at the porch of petitioner's house. Afterwards, another PDEA officer said that they found *shabu* on the floor of petitioner's house. Alyssa reiterated the statement of Dexter that PDEA officers intentionally dropped plastic sachets on the floor. Queenne testified that she did not actually see the PDEA officers take out any item from the plastic container.¹⁶

Vivena, petitioner's mother, testified that she saw one PDEA officer throw a plastic sachet containing white substance on the kitchen floor of petitioner's house. Vivena belied the prosecution's claim that petitioner was out of their house since it was raining hard that day. Vivena also claimed that *Kagawad Uayan* arrived only after the search and arrest were made, and after the plastic sachets were

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¹³ Id. at 52.

¹⁴ Id. at 52-53.

¹⁵ Id. at 51.

¹⁶ Id. at 53.

placed on the table inside petitioner's house. According to Vivena, no media men or municipal officers were present at any stage of the PDEA operation.¹⁷

RTC Ruling

In its June 3, 2015 Joint Decision, the RTC found petitioner guilty of the offenses charged. The dispositive portion of the Joint Decision reads:

WHEREFORE, since there is proof beyond reasonable doubt, the Court hereby convicts accused ANGELITO OBEDENCIO MARTHO JR. of the following:

(1) In Criminal Case #1941, for violating Section 11 Subsection 3 Article II of R.A. 9165 for possessing, without legal authority 0.04 gram of Methamphetamine Hydrochloride or Shabu on June 5, 2012 at around 6 o'clock in the evening at Talisay, Bauk-Bauk, Balingoan, Misamis Oriental, and hereby sentences him to serve a term of imprisonment of Twelve (12) Years and One (1) Day, as minimum, and Twelve (12) Years & Two (2) Days, as maximum, and to pay a fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00)

(2) In Criminal Case #1942, for violating Section 5 Article II of R.A. 9165 for selling 0.02 gram of Methamphetamine Hydrochloride or Shabu to a poseur-buyer on June 5, 2012 at around 6 o'clock in the evening at Talisay, Bauk-Bauk, Balingoan, Misamis Oriental, and hereby sentences him to serve a term of imprisonment of Life Imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00). As provided under R.A. 9346, he is not eligible for parole.

Further, as provided under Section 35 Accessory Penalties of R.A. 9165, ANGELITO OBEDENCIO MARTHO JR. is disqualified to exercise his *civil rights* such as, but not limited to, the rights of parental authority or guardianship over his children as to their person or property, the right to dispose of the property of his children by any act or any conveyance *inter vivos*, and political rights, such as the right to vote and be voted for.

Consequently, the Acting Branch Clerk of Court of this Station, RAMONITO OCTAVIUS L. SALISE, shall turn over to the Philippine Drug Enforcement Agency – Regional Office No.

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¹⁷ Id.

10 (PDEA – RO No. 10) the specimens marked as Exhibits J J-1 J-2 K K-1 K-2 & K-3, which are the specimens A B C D E F in Chemistry Report No. PDEA-DD-2012-027, for their proper disposition and destruction, as provided for by law, and to submit a report to [this] Court, within fifteen (15) days from compliance.

[SO ORDERED].¹⁸

The RTC held that all the elements of illegal sale and illegal possession of *shabu* were proven by the prosecution. Moreover, it found that the integrity and evidentiary value of the seized sachets of *shabu* were properly preserved and that the links in the chain of custody were unbroken. The RTC held that IO1 Ancheta and IA3 Escudero had custody of the seized sachets of *shabu* from the time of petitioner's arrest until the turnover of the sachets to Chemist Unito. The RTC noted that no other persons had access to the respective lockers of IO1 Ancheta and IA3 Escudero where they kept the seized sachets of *shabu* before giving the same to Chemist Unito for forensic examination.

Petitioner thus filed an appeal before the CA.

The CA Ruling

In its April 24, 2017 Decision, the CA affirmed petitioner's conviction for the offenses charged but modified the penalty meted out by the RTC for the charge of illegal possession of dangerous drugs in order to adhere to the penalties provided under R.A. No. 9165. The dispositive portion of the CA decision reads:

WHEREFORE, the instant appeal is hereby **DENIED** for lack of merit. The 3 June 2015 Joint Decision of the Regional Trial Court of Medina, Misamis Oriental, Branch 42 in Criminal Case [Nos.] 1941-M(2012) and 1942-M(2012) is hereby **AFFIRMED WITH MODIFICATION**, amending the dispositive portion to read, as follows:

WHEREFORE, since there is proof beyond reasonable doubt, the Court hereby convicts accused ANGELITO OBEDENCIO MARTHO, JR., of the following:

(1) In Criminal Case #1941,
for violating Section 11 Subsection 3
Article II of R.A. 9165 for

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¹⁸ Id. at 53-54.

possessing, without legal authority, 0.04 gram of Methamphetamine Hydrochloride or Shabu on June 5, 2012 at around 6 o'clock in the evening at Talisay, Bauk-Bauk, Balingoan, Misamis Oriental and hereby sentences him to serve a term of imprisonment of Fourteen (14) Years, Eight (8) Months & and One (1) Day as minimum, to Seventeen (17) Years & Four (4) Months, as maximum, and to pay a fine of THREE HUNDRED THOUSAND PESOS (**Php300,000.00**)

(2) In Criminal Case #1942, for violating Section 5 Article II of R.A. 9165 for selling 0.02 gram of Methamphetamine Hydrochloride or Shabu to a poseur-buyer on June 5, 2012 at around 6 o'clock in the evening at Talisay, Bauk-Bauk, Balingoan, Misamis Oriental and hereby sentences him to serve a term of imprisonment of Life Imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (**Php500,000.00**). As provided under R.A. 9346, he is not eligible for parole.

Further, as provided under Section 35 Accessory Penalties of R.A. 9165, ANGELITO OBEDENCIO MARTHO JR. is disqualified to exercise his civil rights such as, but not limited to, the rights of parental authority or guardianship over his children as to their person or property, the right to dispose of the property of his children by any act or any conveyance *inter vivos*, and political rights, such as the right to vote and be voted for.

Consequently, the Acting Branch Clerk of Court of this Station, RAMONITO OCTAVIUS L. SALISE, shall turn over to the Philippine Drug Enforcement Agency – Regional Office No. 10 (PDEA – RO No. 10) the specimens marked as Exhibits J, J-1, J-2, K, K-1, K-2 & K-3, which are the specimens ABCDEF in Chemistry Report No. [PDEA-DD-2012-027], for their proper disposition

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and destruction, as provided for by law and to submit a report to [this] Court, within fifteen (15) days from compliance.

SO ORDERED.¹⁹ (*italics omitted*)

In upholding petitioner's conviction, the CA found that the requisites for illegal sale of *shabu* were duly proven by the prosecution. IO1 Ancheta was able to testify that petitioner sold him *shabu* during the buy-bust operation and that the laboratory examination conducted by Chemist Unito confirmed that the substance sold to him were indeed positive for *shabu*. As to the charge of illegal possession of *shabu*, the CA ruled that the prosecution had sufficiently established the elements of the offense. IA3 Escudero recovered from petitioner four (4) more plastic sachets, the contents of which were also found positive for *shabu* by Chemist Unito. The CA held that the frisking was legal as it was done incidental to petitioner's lawful arrest. Anent the chain of custody, the CA declared that the integrity and evidentiary value of the seized items were preserved, given that IO1 Ancheta and IA3 Escudero immediately brought the sachets of *shabu* to the nearest police station for marking purposes. Thereafter, the sachets were turned over to Chemist Unito for laboratory examination. Moreover, IO1 Ancheta and IA3 Escudero testified in open court that they had kept the seized items in their respective possession until their turnover to Chemist Unito.

Petitioner filed a motion for reconsideration, which the CA denied in its October 10, 2017 Resolution.

Hence, this petition for review on *certiorari*.

Issue

WHETHER THE GUILT OF PETITIONER FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

Petitioner argues that there was no buy-bust operation; that inconsistencies marred the testimonies of the prosecution's witnesses regarding the marking of the seized items; that in their respective affidavits, IO1 Ancheta and IA3 Escudero deposed that they marked the seized items immediately after arresting petitioner and that *Kagawad* Uayan only arrived after the marking to witness the inventory; that in their direct testimonies, IO1 Ancheta and IA3

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¹⁹ Id. at 3-5.



Escudero stated that they conducted the marking and inventory in the presence of *Kagawad Uayan*; that *Kagawad Uayan* testified that there were no markings on the plastic sachets when he arrived; that the signature of *Kagawad Uayan* was lacking in the inventory sheet since he refused because he did not witness the actual inventory of the items; that there are gaps in the chain of custody; and that the prosecution failed to clearly establish who handled the seized items after petitioner's arrest, during the inventory, and before the turnover to Chemist Unito.

In its Comment,²⁰ respondent, through the Office of the Solicitor General (*OSG*), contends that the chain of custody was sufficiently proven by the prosecution; that an unbroken chain of custody is only indispensable and essential "when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness;"²¹ that there is no need to prove an unbroken chain of custody since the seized items from petitioner were distinctive and readily identifiable and their condition was not critical at the time of testing since there was nothing irregular with the procedure followed by police authorities; that there are no inconsistencies in the testimonies of the witnesses; and that it was clear from the testimonies that *Kagawad Uayan* had witnessed both the marking and inventory of the seized items.

The Court's Ruling

The petition is meritorious.

The Court finds that the prosecution failed to establish compliance with the procedural requirements laid down by Sec. 21, Art. II of R.A. No. 9165. Sec. 21 states:

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:

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²⁰ Id. at 71-85.

²¹ Id. at 82.

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photo-graph 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, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x

Sec. 21 mandates the conduct of inventory and photographing of the seized evidence in the presence of four (4) mandatory witnesses: the accused, a media representative, an elected public official, and a representative from the DOJ. The presence of these mandatory witnesses guarantee against planting of evidence and frame-up as they insulate the apprehension and incrimination proceedings from any taint of illegitimacy and irregularity.²²

In this case, no representative from the media and the DOJ were present to witness the marking, inventory, and photographing of the seized evidence. IO1 Ancheta testified that only *Kagawad* Uayan was present during the inventory and photographing of the seized evidence, along with petitioner:

Q There is also no other people like member of the media present during the inventory?

A During the inventory, other media trying to call me but I do not know...

Q Just answer, was there a member of the media?

A None.

Q There was [also no] member or representative from the DOJ?

A None.²³

Nonetheless, Sec. 21 of R.A. No. 9165 provides for an exception to the rule that the mandatory witnesses be present during the marking, inventory, and photographing of the seized evidence. The seized evidence does not necessarily lose its validity in case there was noncompliance with such requirement, as long as (1) there are justifiable grounds for such failure and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

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²² *People v. Sagana*, 815 Phil. 356, 372-373 (2017).

²³ TSN, January 9, 2013, p. 28.

In *People v. Lim*,²⁴ the Court enumerated the justifiable grounds that the apprehending team may validly invoke in case of failure to comply with the mandatory witnesses rule, to wit: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photographing of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Art. 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

In this case, the prosecution failed to prove that any of the justifiable grounds in *People v. Lim* existed in order to excuse the apprehending officers from their noncompliance with Sec. 21. In fact, the prosecution did not acknowledge such failure at all or show that genuine and sufficient efforts were exerted by the apprehending officers securing the presence of the mandatory witnesses.

In *People v. Crispo*,²⁵ the Court held that the prosecution has the **positive duty** to prove compliance with the procedure set forth in Sec. 21, Art. II of R.A. No. 9165. They **must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.** This Court also ruled in *Gamboa v. People*²⁶ that “the saving clause only applies where the prosecution has recognized the procedural lapses on the part of the police officers or PDEA agents, and thereafter explained the cited justifiable grounds; after which, the prosecution must show that the integrity and evidentiary value of the seized items have been preserved.” Consequently, the prosecution’s failure to acknowledge the deficiency and to provide a justifiable ground therefor casts doubt on the integrity and evidentiary value of the *corpus delicti*.

As a rule, strict compliance with the prescribed procedure is required because of the illegal drug’s unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering,

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²⁴ G.R. No. 231989, September 4, 2018.

²⁵ 828 Phil. 416, 437 (2018).

²⁶ 799 Phil. 584, 595 (2016).


alteration or substitution either by accident or otherwise.²⁷ The presence of the four (4) witnesses mandated by Sec. 21, Art. II of R.A. No. 9165 safeguards the accused from any unlawful tampering of the evidence against him. Consequently, in this case, the seizure and custody of the seized sachets of *shabu* are rendered null and void by reason of the absence of these witnesses which, perforce, warrants the acquittal of petitioner.

WHEREFORE, premises considered, the appeal is **GRANTED**. The April 24, 2017 Decision and October 10, 2017 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 01427-MIN, which affirmed the June 3, 2015 Joint Decision of the Regional Trial Court of Medina, Misamis Oriental, Branch 42, in Criminal Case Nos. 1941-M(2012) and 1942-M(2012), finding petitioner Angelito Obedencio Martho, Jr. guilty of violating Sections 5 and 11, Article II of Republic Act No. 9165, are **REVERSED** and **SET ASIDE**. Petitioner is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director of the Bureau of Corrections is **ORDERED** to **IMMEDIATELY RELEASE** petitioner from detention, unless he is being lawfully held in custody for any other reason, and to inform this Court of his action hereon within five (5) days from receipt of this Resolution.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
2017

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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²⁷ *People v. Pagaduan*, 641 Phil. 432, 444 (2010).



Atty. Romero A. Boniel
Counsel for Petitioner
Boys Scout of the Philippines Building
Monsignor Hayes Street
9000 Cagayan de Oro City

Mr. Angelito Obedencio Martho, Jr
Petitioner
c/o The Superintendent
Davao Prison and Penal Farm
B.E. Dujali, 8105 Davao del Norte

Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CR HC No. 01427-MIN)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 42
Medina, 9013 Misamis Oriental
(Crim. Case Nos. 1941-M[2012]
& 1942-M[2012])

The Superintendent
Davao Prison and Penal Farm
B.E. Dujali, 8105 Davao del Norte

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

Public Information Office (x)
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