



Republic of the Philippines
Supreme Court
Manila

EN BANC

IN THE MATTER OF THE
PETITION FOR ISSUANCE OF
WRIT OF *HABEAS CORPUS*
WITH PETITION FOR RELIEF

INTEGRATED BAR OF THE
PHILIPPINES PANGASINAN
LEGAL AID and JAY-AR R.
SENIN,

Petitioners,

- versus -

DEPARTMENT OF
JUSTICE, PROVINCIAL
PROSECUTOR'S OFFICE,
BUREAU OF JAIL
MANAGEMENT AND
PENOLOGY, and
PHILIPPINE NATIONAL
POLICE,

Respondents.

G.R. No. 232413
[Formerly UDK 15419]

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
MENDOZA,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,*
MARTIRES,
TIJAM, and
REYES, JR., JJ.

Promulgated:

July 25, 2017

Roberto Sison

X ----- X

DECISION

MENDOZA, J.:

This is a petition for the issuance of writ of *habeas corpus* with a petition for declaratory relief filed by the Integrated Bar of the Philippines

* No Part.

(IBP) Pangasinan Chapter Legal Aid, pursuant to its purpose, as stated in “*In the Matter of the Integration of the Bar of the Philippines*,” issued by the Supreme Court on January 9, 1973, and the provisions under Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the Integrated Bar of the Philippines (*Guidelines on Legal Aid*).

The petition claims that as a result of jail visitations participated in by the IBP Legal Aid Program, as well as a series of consultations with the Philippine National Police (*PNP*) on the extant condition of detention prisoners, it was discovered that several detention prisoners had been languishing in jail for years without a case being filed in court by the prosecutor’s office and without definite findings as to the existence or non-existence of probable cause.

DOJ Issuances

The petition considers such condition of several detention prisoners as an alarming situation brought about by several Department of Justice (*DOJ*) issuances, namely:

1. DOJ Circular (*D.C.*) No. 12, series of 2012, which provided that the dismissal of all drug-related cases involving violations for which the maximum penalty is either *reclusion perpetua* or life imprisonment is subject to automatic review by the Justice Secretary whether such case has been dismissed on inquest, preliminary investigation or reinvestigation. It also stated that [t]he automatic review shall be summary in nature and shall, as far as practicable, be completed within 30 days from receipt of the case records, without prejudice to the right of the respondent to be immediately released from detention pending automatic review, unless the respondent is detained for other causes;
2. *D.C.* No. 22, series of 2013, entitled Guidelines on the Release of Respondents/Accused Pending Automatic Review of Dismissed Cases Involving Republic Act (*R.A.*) No. 9165; and

3. D.C. No. 50, series of 2012, entitled Additional Guidelines on the Application of Article 125 of the Revised Penal Code, as Amended (*RPC*).¹

For the IBP, it is the height of injustice when innocent persons are left to suffer in jail for years without a fixed term. Contending that it is their duty to defend the Constitution and protect the people against unwarranted imprisonment and detention, the IBP is requesting the Court to act on the amendment of the Rules on Preliminary Investigation, by way of a letter, which has been forwarded to the Committee on Revision. Pending the desired amendment, however, the IBP urges the Court to act on the urgent and imperative need to release from detention those who are wrongfully imprisoned despite the absence of probable cause.

The IBP represents in this case its client, Jay-Ar Senin (*Senin*). Senin's rights were allegedly violated because he has been detained for at least eight months without any finding of probable cause or a case having been filed in court.

Senin's case started when a complaint against him and other unidentified persons was indorsed on February 9, 2015, by Police Chief Inspector Crisante Pagaduan Sadino of the San Fabian Police Station, Pangasinan to the Provincial Prosecutor's Office. He was arrested while engaged in the sale of illegal drugs during a buy-bust operation. Thereafter, he executed a waiver of the provisions of Article 125 of the RPC. After the preliminary investigation, the prosecutor resolved to dismiss the case. Pursuant to the then prevailing DOJ Circular, the case was forwarded to the DOJ for automatic review.

The IBP claims that the waiver of Article 125 of the RPC does not vest the DOJ, Provincial Prosecutor's Office (*PPO*), Bureau of Jail Management and Penology (*BJMP*), and the PNP, the unbridled right to detain Senin indefinitely subject only to the whims and caprices of the reviewing prosecutor of the DOJ. Section 7, Rule 112 of the Rules of Court explicitly provides that preliminary investigation must be terminated within 15 days from its inception if the person arrested had requested for a preliminary investigation and had signed a waiver of the provisions of

¹ Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

Article 125.² It follows, therefore, that the waiver of Article 125 must coincide with the 15-day period of preliminary investigation. The detention beyond this period violates Senin's constitutional right to liberty. The review of the investigating prosecutor's resolution has been pending with the DOJ for more than eight months. The IBP concludes that Senin must be released from detention and be relieved from the effects of the unconstitutional issuances of the DOJ.

Thus, the petition prays that the Court:

- a) declare that pursuant to A.M. No. 08-11-7-SC, the petitioner is exempt from the payment of filing fees;
- b) issue a writ of *habeas corpus* directing the release of Senin;
- c) declare the aforementioned issuances of the DOJ as unconstitutional;
- d) immediately set the case for hearing due to its urgency; and
- e) issue a writ of *kalayaan* directing the release of all detention prisoners in a similar plight.

Department Circular No. 50

On December 18, 2015, D.C. No. 50 was issued by then Secretary of Justice (*SOJ*), now Associate Justice Alfredo Benjamin S. Caguioa of this Court. In brief, D.C. No. 50 stated that a person with a pending case for automatic review before the DOJ shall be released immediately if the review is not resolved within a period of 30 days, to wit:

² Section 7. *When accused lawfully arrested without warrant.* — When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule.

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9. All cases subject to automatic review shall be resolved by the Office of the Secretary within thirty (30) days from the date the complete records are elevated to this Department in order to give the concerned signatory of the review resolution sufficient time to study the case, the reviewing prosecutor to whom the case is assigned is mandated to submit his recommendation to the concerned signatory ten (10) days before the thirty (30) day deadline. The docket section of this Department is also directed to monitor compliance with the periods prescribed herein.

If the case subject of the automatic review is not resolved within thirty (30) days, then the respondent shall be immediately released from detention pending automatic review, unless the respondent is detained for other causes.

D.C. No. 50 also directed all heads of prosecution offices to immediately issue corresponding release orders in favor of respondents, whose cases are still pending automatic review before the Office of the Secretary, beyond the 30 day period, unless they are detained for other causes.

Department Circular No. 003

On January 13, 2016, however, D.C. No. 003 was issued revoking DC No. 50 and reinstating D.C. No. 012, series of 2012.

Reversal of the Order of Dismissal

Meanwhile, on February 10, 2016, the Information against Senin for Illegal Possession of Dangerous Drugs was finally filed by Prosecutor Marcelo C. Espinosa. Later, the RTC, Branch 43, Dagupan City (RTC), issued a commitment order directing Senin's detention during the pendency of the case against him.

On February 16, 2016, the IBP filed a manifestation with motion informing the Court that to their surprise, Senin signed a Motion for Issuance of Order of Release; that such motion was filed before the RTC, Branch 43, and was later on set for hearing; that to protect the interest of Senin, the IBP filed a motion to intervene in the said proceeding; that no case has been filed before the said trial court; that any action the RTC would take might pre-empt the Court in resolving this case; and that Senin remains incarcerated despite the issuance of D.C. No. 50. With all these events, the IBP prays for the issuance of an order directing BJMP to release Senin from detention unless detained for some other lawful causes.

An Amended Information, dated February 22, 2016, was subsequently filed before the RTC, Branch 43.

Department Circular No. 004

On January 4, 2017, the incumbent Secretary of Justice, Vitaliano N. Aguirre II, issued D.C. No. 004, series of 2017, the pertinent provisions of which read:

In the interest of the service and pursuant to the provisions of existing laws, the dismissal of all cases whether on inquest, preliminary investigation, reinvestigation or on appeal, filed for violation of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) and involving the maximum penalty of *reclusion perpetua* or life imprisonment, shall be subject to automatic review by the Secretary of Justice.

The entire records of the case shall be elevated to the Secretary of Justice, within three (3) days from issuance of the resolution dismissing the complaint or appeal, as applicable, and the parties involved shall be notified accordingly.

Notwithstanding the automatic review, respondent shall be immediately released from detention unless detained for other causes.

This Department Circular shall apply to all pending cases and to those which have been dismissed prior to the issuance hereof, if such dismissal has not yet attained finality as of the the effectivity of this Circular.

This Department Order revokes all prior issuances inconsistent herewith and shall take effect immediately until revoked.

For strict compliance.

Position of the IBP on the effect of the amendments on the DOJ issuances

The IBP concedes that the present detention of Senin had been overrun by the issuance of D.C. No. 50, the resolution of the DOJ *reversing* the dismissal order of the PPO and the eventual filing of the February 22, 2016 Amended Information. It remains firm, however, that despite these circumstances, the dismissal of this petition is not in order as the writ of *habeas corpus* for the immediate release of Senin is but one of the three

reliefs being sought from the Court. The IBP reiterates that the constitutionality of DC No. 12, series of 2012, DC No. 22, series of 2013 and DC No. 50 is still being questioned. Likewise, it emphasizes that the issuance of a writ of *kalayaan* is one of the reliefs prayed for in order to protect those similarly situated as Senin.

The IBP pleads for the Court not to dismiss the petition outright and resolve the issue on the constitutionality of the DOJ issuances in order to prevent the executive department from issuing orders which tend to violate basic constitutional rights.

It appears that the IBP is unaware of the issuance of D.C. No. 004 as no manifestation has been filed with the Court regarding the same circular.

Position of the BJMP

According to the BJMP, Senin has been confined in its facility through a valid commitment order issued by the court and cannot be released without an order directing the same. It asserts that it has not disregarded or violated any existing laws or policy at the expense of Senin's rights. The BJMP cites *Agbay v. Deputy Ombudsman*³ and its 2007 Revised BJMP Manual,⁴ wherein it is provided that court order is required before a prisoner can be released. It insists that the continuous detention of Senin is legal considering that the RTC has already issued a commitment order, which has not been recalled or revoked.

The BJMP avers that D.C. No. 50 does not vest it unbridled discretion to release prisoners because a court order is always required. It opines that the filing of an Information against Senin for Illegal Possession of Dangerous Drugs mooted the question on the legality of the latter's detention.

³ 369 Phil. 174 (1999). The power to order the release or confinement of the accused is determinative of the issue. In contrast with a city fiscal, it is undisputed that a municipal court judge, even in the performance of his function to conduct preliminary investigation retains the power to issue order of release or commitment.

⁴ No inmate shall be released on a mere verbal order or an order relayed by telephone. The release of an inmate by reason of acquittal, dismissal of case, payment of fines and/or indemnity, or filing of bond shall be effected only upon receipt of the Release Order served by the court process server. The Court Order shall bear the full name of the inmate, the crime he/she was charged with, the criminal case number and such other details that will enable the officer in charge to properly identify the inmate to be released.

Position of the OSG

The Office of the Solicitor General (*OSG*) posits that the remedy of *habeas corpus* availed of by the IBP and Senin is not appropriate considering that as of February 10, 2016, the SOJ has found the existence of probable cause for the filing of information in court. For said reason, the OSG deems it unnecessary for the Court to determine the constitutionality of the DOJ issuances as the question on the legality of Senin's detention has already been put to rest. In other words, the OSG points out that the constitutional question is not the very *lis mota* of the case, thus, precluding this Court from exercising its power of judicial review.

Reply of the IBP

The IBP seeks to nullify the DOJ issuances for the alleged violation of the detainee's rights. It asserts that the DOJ issuances requiring the automatic review of dismissed cases involving drug-related cases for which the maximum penalty is either *reclusion perpetua* or life imprisonment, permit the indefinite confinement of a pre-trial detainee who has waived Article 125 of the RPC in order to undergo preliminary investigation. The IBP believes that a person who has requested the conduct of a preliminary investigation can only be detained for a maximum period of 15 days because the Rules require that the preliminary investigation be terminated within such period despite waiver of Article 125. It also claims that those persons whose cases were dismissed initially by the investigating prosecutor should be released even if the dismissal is still subject to re-investigation or to the SOJ's automatic review.

History of the DOJ Issuances

D.C. No. 46, dated June 26, 2003

The process of automatic review of dismissed drug cases was first instituted in 2003.

Due to numerous complaints about illegal drug cases being whitewashed or dismissed due to sloppy police work, former SOJ Simeon Datumanong issued D.C. No. 46, empowering the DOJ to automatically review dismissed cases filed in violation of R.A. No. 9165 and involving the maximum penalty of life imprisonment or death.

The circular also applied to cases which had been dismissed prior to its issuance if such dismissal had not yet attained finality as of the date of the circular.

D.C. No. 12, dated February 13, 2012

D.C. No. 46 was followed by D.C. No. 12 in which former SOJ Leila M. De Lima, for the most part, reiterated the provisions of the first circular but added that automatic review of dismissed drug cases shall be without prejudice to the right of the respondent to be immediately released from detention pending automatic review, unless respondent is detained for other causes.

D.C. No. 22, dated February 12, 2013

A year after, SOJ De Lima revised the guidelines directing the continued detention of some respondents accused of violating R.A. No. 9165. She reasoned that cases, where the maximum imposable penalty *reclusion perpetua* or life imprisonment, are presumably high-priority drug cases whose alleged perpetrators should remain in custody.

In this circular, the only respondents who may be released, pending automatic review of their cases by the SOJ, are those whose cases were dismissed during inquest proceedings on the ground that the arrest was not a valid warrantless arrest under Section 5, Rule 113 of the Rules of Criminal Procedure, or that no probable cause exists to charge respondents in court.

The respondents shall remain in custody, pending automatic review of the dismissal of their cases, in the following instances as provided for under the circular:

1. When during inquest proceedings, respondent elects to avail of a regular preliminary investigation and waives in writing the provisions of Article 125 of the RPC;
2. When an information is filed in court after inquest proceedings and the accused is placed in the custody of the law, but the court allows the accused to avail of a regular preliminary investigation, which results in the dismissal of the case, the handling prosecutor shall insist that the accused shall remain in the custody of the law pending automatic review by the SOJ, unless the court provides otherwise, or until the dismissal is affirmed by the SOJ and

the corresponding motion to dismiss or withdraw information is granted by the court;

3. When an information is filed in court after preliminary investigation proceedings and the accused is placed in the custody of the law, but the court allows the accused to avail of reinvestigation, which results in the dismissal of the case, the accused shall remain in custody of the law pending automatic review by the SOJ, unless the court provides otherwise, or until the dismissal is affirmed by the SOJ and the corresponding motion to dismiss or withdraw information is granted by the court; and
4. When the case against respondent is dismissed after due reinvestigation, if the case was commenced as an inquest case but was converted to a regular preliminary investigation after respondent elected the same and waived the provisions of Article 125 of the RPC.

D.C. No. 50, dated December 18, 2015

In order to address the problem of delay in the disposition of cases subject to automatic review and the prolonged detention of drug suspects without any case filed against them, then SOJ Caguioa issued D.C. No. 50, directing all heads of prosecution offices to immediately issue corresponding release orders in favor of respondents whose cases are still pending automatic review before the SOJ beyond the 30-day period prescribed in the subject circular, unless respondents are detained for some other causes.

D.C. No. 003, dated January 13, 2016

In view of the considerable number of petitions for *habeas corpus* filed against the DOJ by accused languishing in jail for years while their cases were pending automatic review by the DOJ, then SOJ Caguioa revoked D.C. No. 50 dated December 18, 2015 and D.C. No. 22, dated February 12, 2013.

SOJ Caguioa then reinstated D.C. No. 12, dated February 13, 2012, mandating immediate release of respondents pending automatic review, unless respondents are detained for other causes.

D.C. No. 004, dated January 4, 2017

SOJ Vitaliano Aguirre, in this latest circular, reiterated the provisions of D.C. No. 3, dated January 13, 2016, in so far as it orders the respondent/s to be immediately released from detention, pending automatic review, unless detained for other causes.

Petition is moot and academic

The Court agrees with the OSG that this controversy has become moot and academic. *First*, the DOJ already issued D.C. No. 004, series of 2017, which recognizes the right of a detainee to be released even if the dismissal of the case on preliminary investigation is the subject of automatic review by the SOJ. *Second*, records show that the order of dismissal was reversed; that upon filing of the information with the court, there was judicial determination of probable cause against Senin; and that following such judicial determination, the court issued a warrant of arrest and a commitment order.

The rule pertaining to pre-trial detainees whose cases are under preliminary investigation, or whose cases have been dismissed on inquest, preliminary investigation but pending appeal, motion for reconsideration, reinvestigation or automatic review

Although the latest circular of Secretary Aguirre is laudable as it adheres to the constitutional provisions on the rights of pre-trial detainees, the Court will not dismiss the case on the ground of mootness. As can be gleaned from the ever-changing DOJ circulars, there is a possibility that the latest circular would again be amended by succeeding secretaries. It has been repeatedly held that “the Court will decide cases, otherwise moot, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is

capable of repetition yet evading review.⁵ All four (4) requisites are present in this case.

As the case is prone to being repeated as a result of constant changes, the Court, as the guardian and final arbiter of the Constitution⁶ and pursuant to its prerogative to promulgate rules concerning the protection and enforcement of constitutional rights,⁷ takes this opportunity to lay down controlling principles to guide the bench, the bar and the public on the propriety of the continued detention of an arrested person whose case has been dismissed on inquest, preliminary investigation, reinvestigation, or appeal but pending automatic review by the SOJ.

The rule is that a person subject of a warrantless arrest must be delivered to the proper judicial authorities⁸ within the periods provided in Article 125 of the RPC, otherwise, the public official or employee could be held liable for the failure to deliver except if grounded on reasonable and allowable delays. Article 125 of the RPC is intended to prevent any abuse resulting from confining a person without informing him of his offense and without allowing him to post bail. It punishes public officials or employees who shall detain any person for some legal ground but fail to deliver such person to the proper judicial authorities within the periods prescribed by law. In case the detention is without legal ground, the person arrested can charge the arresting officer with arbitrary detention under Article 124 of the RPC. This is without prejudice to the possible filing of an action for damages under Article 32 of the New Civil Code of the Philippines.

Article 125 of the RPC, however, can be waived if the detainee who was validly arrested without a warrant opts for the conduct of preliminary investigation. The question to be addressed here, therefore, is whether such waiver gives the State the right to detain a person indefinitely.

The Court answers in the negative.

⁵ *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, G.R. Nos. 209271, 209276, 209301 & G.R. No. 209430 (Resolution), July 26, 2016.

⁶ In his Dissenting Opinion in *IBP v. Hon. Ponce Enrile* (223 Phil. 561, 619 [1985]), then Chief Justice Claudio Teehankee said:

“The judiciary, as headed by the Supreme Court has neither the power of the sword nor the purse. Yet as the third great department of government, it is entrusted by the Constitution with judicial power – the awesome power and task of determining disputes between litigants involving life, liberty and fortune and protecting the citizen against arbitrary or oppressive action of the State. The Supreme Court and all inferior courts are called upon by the Constitution ‘to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary [assisted by the bar] stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive as also transgression of its constitutional limitations by the legislature.”

⁷ Constitution, Article VIII, Section 5(5).

⁸ The words “judicial authority” as contemplated by Art. 125 mean “the courts of justices or judges of said courts vested with judicial power to order the temporary detention or confinement of a person charged with having committed a public offense, that is, the Supreme Court and such inferior courts as may be established by law.” (*Sayo v. Chief of Police of Manila*, 80 Phil. 859, 866 (1948), as cited in *Agbay v. Deputy Ombudsman for the Military*, 369 Phil. 174, 188 [1999]).

The waiver of Article 125 of the RPC does not vest upon the DOJ, PPO, BJMP, and PNP the unbridled right to indefinitely incarcerate an arrested person and subject him to the whims and caprices of the reviewing prosecutor of the DOJ. The waiver of Article 125 must coincide with the prescribed period for preliminary investigation as mandated by Section 7, Rule 112 of the Rules of Court. Detention beyond this period violates the accused's constitutional right to liberty.

Stated differently, the waiver of the effects of Article 125 of the RPC is not a license to detain a person *ad infinitum*. Waiver of a detainee's right to be delivered to proper judicial authorities as prescribed by Article 125 of the RPC does not trump his constitutional right in cases where probable cause was initially found wanting by reason of the dismissal of the complaint filed before the prosecutor's office even if such dismissal is on appeal, reconsideration, reinvestigation or on automatic review. Every person's basic right to liberty is not to be construed as waived by mere operation of Section 7, Rule 112 of the Rules of Court. The fundamental law provides limits and this must be all the more followed especially so that detention is proscribed absent probable cause.

Accordingly, the Court rules that a detainee under such circumstances must be promptly released to avoid violation of the constitutional right to liberty, despite a waiver of Article 125, if the 15-day period (or the thirty 30-day period in cases of violation of R.A. No. 9165⁹) for the conduct of the

⁹ Republic Act No. 9165, Section 90. *Jurisdiction*. — The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

The DOJ shall designate special prosecutors to exclusively handle cases involving violations of this Act.

The preliminary investigation of cases filed under this Act shall be terminated within a period of thirty (30) days from the date of their filing.

When the preliminary investigation is conducted by a public prosecutor and a probable cause is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a probable cause is found to exist, the corresponding information shall be filed by the proper prosecutor within forty-eight (48) hours from the date of receipt of the records of the case.

Trial of the case under this Section shall be finished by the court not later than sixty (60) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case for resolution.

The Implementing Rules and Regulations of the law further states:

Section 90. *Jurisdiction*. — The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of the Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

The DOJ, through its provincial/city prosecution offices, shall designate special prosecutors to exclusively handle cases involving violations of the Act.

The preliminary investigation of cases filed under the Act shall be terminated within a period of thirty (30) days from the date of their filing.

preliminary investigation lapses. This rule also applies in cases where the investigating prosecutor resolves to dismiss the case, even if such dismissal was appealed to the DOJ or made the subject of a motion for reconsideration, reinvestigation or automatic review. The reason is that such dismissal automatically results in a *prima facie* finding of lack of probable cause to file an information in court and to detain a person.

The Court is aware that this decision may raise discomfort to some, especially at this time when the present administration aggressively wages its “indisputably popular war on illegal drugs.” As Justice Diosdado Peralta puts it, that the security of the public and the interest of the State would be jeopardized is not a justification to trample upon the constitutional rights of the detainees against deprivation of liberty without due process of law, to be presumed innocent until the contrary is proved and to a speedy disposition of the case.

WHEREFORE, it is hereby declared, and ruled, that all detainees whose pending cases have gone beyond the mandated periods for the conduct of preliminary investigation, or whose cases have already been dismissed on inquest or preliminary investigation, despite pending appeal, reconsideration, reinvestigation or automatic review by the Secretary of Justice, are entitled to be released pursuant to their constitutional right to liberty and their constitutional right against unreasonable seizures, unless detained for some other lawful cause.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

When the preliminary investigation is conducted by a public prosecutor and a probable cause is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a probable cause is found to exist, the corresponding information shall be filed by the proper prosecutor within forty-eight (48) hours from the date of receipt of the records of the case.

However, when the prosecutor disagrees with the finding of the Municipal Trial Court and he/she finds the need to conduct a formal reinvestigation of the case to clarify issues, or to afford either party the opportunity to be heard to avoid miscarriage of justice, the prosecutor has to terminate the reinvestigation within fifteen (15) days from receipt of the records, and if probable cause exists, to file the corresponding information in court within forty-eight (48) hours from termination of the reinvestigation.

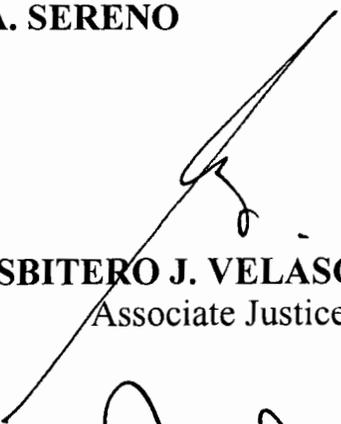
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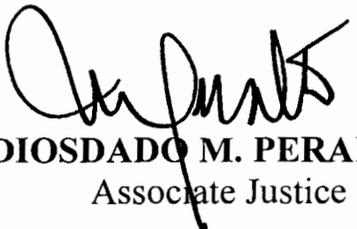
WE CONCUR:

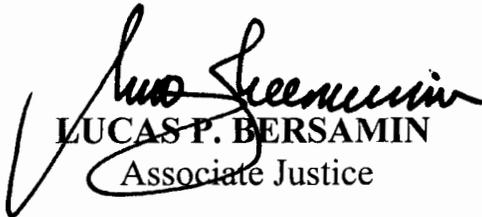

MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

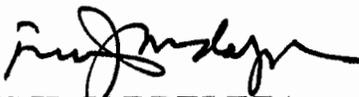

DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

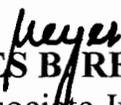

MARVIC M.V.F. LEONEN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

(No Part)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


NOEL C. TIJAM
Associate Justice


ANDRES B. REYES, JR.
Associate Justice

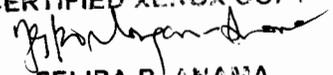
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT