



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0240**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019

SB-18-CRM-0241
For: Plunder

SB-18-CRM-0242
For: Direct Bribery under
Art. 210 of the RPC

SB-18-CRM-0243
For: Violation of P.D. No. 46

Present

- versus -

AL C. ARGOSINO, ET AL.
Accused.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
TRESPESES,* J.

Promulgated:

FEB 28 2019

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Motion for Reconsideration (Re: Resolution dated 28 January 2019)*¹ filed by accused Michael B. Robles; and

* J. Trespeses participated in the assailed Resolution (2018 Revised Internal Rules of the Sandiganbayan, Rule X, Sec. 2[a]); In view of the inhibition of J. Vivero (Per Administrative Order No. 295-2018 dated May 25, 2018)

¹ Dated February 4, 2019; Record, Vol. 12, pp. 362-374

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2. Motion for Reconsideration (to Resolution dated 28 January 2019)² filed by accused Al C. Argosino.

In his *Motion for Reconsideration*, accused Robles prays that this Court reverse and set aside its Resolution dated January 28, 2019,³ and that Associate Justice Sarah Jane T. Fernandez inhibit and/or disqualify herself from further participating in the proceedings. He avers:

1. The Court, in the assailed Resolution, shrugged off the accused' lack of faith and trust, when they were illegally deprived of their liberty.
2. Lack of faith and trust, after the accused were illegally deprived of their liberty, is a state of mind. At the very first sign of such lack of faith and trust, a Judge or Justice is given no alternative but to inhibit.
3. It is not true that they insisted on leaving the Court's premises even before their bail bonds were approved, as held in the assailed Resolution.
 - a. It would be absurd for them to have insisted on leaving before the approval of their bail bonds, considering that they ultimately applied for the approval of the same.
 - b. If they were only being made to wait for the approval of their bail bonds, there was no reason to hold them in a holding facility.
 - c. He could have filed a case to seek redress for the illegal deprivation of his liberty, but he merely opted to seek the inhibition and/or voluntary disqualification of the Justices, believing that he will not get a fair trial.
 - d. They were prompted to post bail after they were assured that they could leave the premises of the Court after their bail bonds were processed. However, they were not allowed to leave.
4. His *Omnibus Motion*⁴ was hastily resolved while he posted bail on April 10, 2018.

² Dated February 2, 2019; Record, Vol. 12, pp. 339-361

³ Record, Vol. 12, pp. 321-330

⁴ Dated and filed on April 2, 2018

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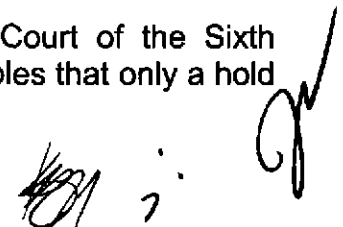
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- a. His *Omnibus Motion* was resolved just four (4) days after the hearing thereof, in a minute resolution. The prosecution was not even required to file its comment and/or opposition.
 - b. As a result, he was denied the opportunity to avail of a temporary restraining order (TRO), and to question the legality of his arrest.
5. In contrast to the hasty issuance of the Minute Resolution dated April 10, 2018, his motion for reconsideration was not resolved expeditiously.
 - a. The prosecution was given ten (10) days to file its Consolidated Comment/Opposition.
 - b. It took forty (40) days to resolve his motion for reconsideration.
 6. The haste in resolving his *Omnibus Motion* shows that Justice Fernandez is way too zealous to detain them, with little or no regard to their legal right.
 7. Any doubt in the actions of a Judge or Justice, which lessens or diminishes the trust and faith of the parties in the court's impartiality, is sufficient ground for the inhibition of such Judge or Justice.

In his *Motion for Reconsideration*, accused Argosino prays that this Court's Justices inhibit themselves from hearing the present cases, and that these cases be re-raffled to another Division of the Sandiganbayan. He avers:

1. He was deprived of liberty without any warrant of arrest.
 - a. The present cases were previously raffled to the Fourth Division. His *Omnibus Meritorious Motion* was set for hearing on April 6, 2018.
 - b. On the same day, April 6, 2018, the cases were re-raffled to the Sixth Division by reason of the voluntary inhibition of one of the Justices of the Fourth Division.
 - c. On April 10, 2018, he went to the Sandiganbayan to inquire on the status of the case, and to find out if a warrant of arrest had already been issued in the cases involving bailable offenses.
 - d. Atty. Mary Ruth Ferrer, the Clerk of Court of the Sixth Division, informed him and accused Robles that only a hold



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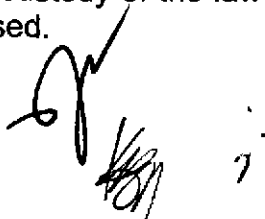
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- departure order (HDO) had been issued. At the time, no warrant of arrest had been issued.
- e. Atty. Ferrer said that the records were still incomplete, as some were still in the Fourth Division. After Atty. Ferrer confirmed that no warrant had been issued, he and accused Robles informed her that they would leave and just come back some other day.
 - f. Atty. Ferrer advised them to stay, as she would call Justice Fernandez again. Upon her return, she informed them that they could no longer leave the premises. When Atty. Ferrer returned, she was accompanied by a Sheriff who positioned himself behind the door to prevent them from leaving.
 - g. He recorded a video of the incident.
 - h. After recording the incident, Atty. Ferrer told them that they would be allowed to leave after their bail had been processed. Later, at around 4:00 P.M., Atty. Ferrer informed them that they could no longer leave because a resolution finding probable cause for Plunder had already been issued.
2. They went to the Sandiganbayan to inquire on whether they can post bail in the cases involvingailable offenses with the knowledge that there was no warrant of arrest for the Plunder charge because the pending incidents were yet to be calendared and heard. At the time, the resolution of his *Omnibus Meritorious Motion*, and accused Robles' *Omnibus Motion* was still pending.
 3. The Court issued a warrant of arrest, effectively ruling that the Information sufficiently charges them with Plunder and that their Motion to Quash was not meritorious.
 4. He seriously doubts if the Court reviewed the records before it issued the minute resolution denying their motions. Atty. Ferrer was quoted saying that the commitment order was issued "since last week" but lacks the signature of an Associate Justice who was out of town." Such commitment order could not have been issued "since last week," considering that the case had been re-raffled to the Sixth Division only on April 6, 2018.
 5. It is not necessary for the Court to detain them to acquire jurisdiction over their persons, and to be able to act on their respective motions. *Miranda v. Tuliao* explains the differences between custody of the law and jurisdiction over the person of the accused.



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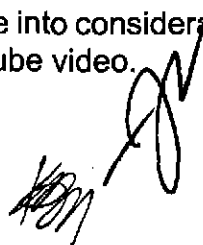
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6. They could not have been legally arrested without a warrant, and without explaining to them their rights under the Miranda doctrine.
7. The Justices of the Court—not a low-ranked officer of the Court—orchestrated their arbitrary detention. Their illegal and hasty arrest could only be interpreted as reflective of the Justices' biases and prejudice.
8. *The Court's Resolutions show that the Justices are biased.*
 - a. *Resolution denying his Motion to Quash in the Plunder case.*
 - i. The Court acted as prosecutor when it ruled that there was a series of acts, notwithstanding the fact that the Office of the Ombudsman realized and confirmed that there was only a single incident or act that constituted the alleged asportation on November 27, 2016.
 - ii. The Court issued said Resolution despite being aware that the Information for Plunder had already been supplanted and abandoned by reason of the substantial amendment of the Information.
 - b. *Resolution denying the accused' applications for bail.*
 - i. His counsel moved to strike the testimony of one of the witnesses for being hearsay. The Court, however, merely acknowledged that the testimony was hearsay.
 - ii. The Court concluded that he was the main plunderer based on his supposed relaxed appearance during the confrontation with Charles T. Calima.
 - iii. The Court concluded that they were the persons appearing in the alleged CCTV video, notwithstanding the fact that no witness identified the persons in said video.
 - iv. The Court refused to apply the *pro reo* rule when it refused to rule that the bills rejected by the money-counting machine were counterfeit.
 - v. The Court refused to take into consideration the accused' explanation in the YouTube video.

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In its *Consolidated Opposition (Re: Accused Argosino and Robles' Motions for Reconsideration of the Resolution dated 28 January 2019)*,⁵ the prosecution counters:

1. Accused Argosino and Robles were not illegally arrested.
 - a. They voluntarily surrendered and posted bail in SB-18-CRM-0240, 0242 and 0243.
 - b. They claim that they went to the Sandiganbayan on April 10, 2018 merely to inquire on the status of the Plunder case, and on whether or not a warrant of arrest had been issued in the cases involvingailable offenses.
 - c. Accused Argosino, however, contradicts his own claim when he later admitted that he and accused Robles went to the Sandiganbayan to inquire if they can already post bail for the cases involvingailable offenses.
 - d. Accused Argosino and Robles were allowed to, and they in fact, posted bail. As a matter of procedure, they could not be allowed to leave the premises of the Court until their bail bonds were approved.
2. The video presented by accused Argosino has not been authenticated. Furthermore, it does not reflect the entire incident he insinuates, and thus, it is susceptible of different interpretations.
3. Accused Argosino and Robles' claim that the Justices exhibited bias and partiality against them when the Court issued the Resolution finding probable cause in the Plunder case is devoid of merit.
 - a. The Court's duty of determining of probable cause was not dependent on accused Argosino and Robles' respective Motions. The Court merely performed its duty when it issued its Resolution finding probable cause despite the pendency of accused Argosino and Robles' Motions.
 - b. The Court correctly denied outright accused Robles' *Omnibus Motion* for being a prohibited motion under the *Revised Guidelines for Continuous Trial of Criminal Cases*. Under the Revised Guidelines, prohibited motions shall be denied outright before the scheduled arraignment without need of comment/opposition.

⁵ Dated and filed on February 11, 2019



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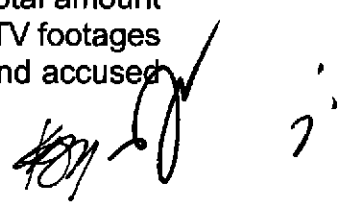
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4. Accused Argosino's claim that Atty. Ferrer employed deception or trickery against him and accused Robles is uncalled for and unfair. She could not have anticipated or preempted the various resolutions, orders or decisions to be issued by the Court.
5. Accused Argosino and Robles had already waived their right to challenge the validity of their "arrest." They actively participated in the proceedings, but raised the issue of the alleged illegal deprivation of liberty only after the Court denied their respective Motions to Quash, Petitions for Bail, and their Motions for Reconsideration.
6. Accused Argosino and Robles failed to prove by clear and convincing evidence *their claim of bias and partiality on the part of the Court's Justices.*
7. They failed to present any extrinsic evidence showing such bias and partiality. They merely relied on the Court's adverse findings or rulings, and characterized the same as being tainted with bias and partiality.
 - a. The Court's findings and rulings resulted from its opinion on the merits of the case on the basis of the evidence presented and conduct observed, its knowledge of the applicable laws and rules, and from what it learned from participating in the proceedings
 - b. The Court merely discharged its duty and exercised its power when it determined that the Information charging Plunder sufficiently alleged the element of "series of acts."
 - c. Accused Argosino's claim that the Court admitted hearsay evidence, referring to the testimony of Gen. Charles T. Calima, is without merit.
 - i. Gen. Calima's testimony was offered for the purpose of proving the context in which accused Argosino and Robles received the total amount of ₱50 million from accused Lam, through accused Sombero.
 - ii. Gen. Calima testified based on his personal knowledge of the events that occurred after said receipt of money, and on how he came into the possession of the ₱18 million.
 - iii. The Court's Resolutions dated August 30, 2018 and November 12, 2018 would show that its finding that accused Argosino and Robles received the total amount of ₱50 million was primarily based on the CCTV footages of the City of Dreams, the YouTube video, and accused



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Argosino and Robles' admission that the money came into their possession.

- d. The Court's finding that accused Argosino is the main plunderer was based not only on his demeanor during the confrontation with Gen. Calima, but also on Gen. Calima's Complaint-Affidavit, which formed part of his direct testimony, and which showed that accused Argosino had control over the disposition of the ₱50 million.
- e. The short version of the CCTV footages from the City of Dreams is both documentary and object evidence. As such, the Court can, and it did in fact, use its senses in determining that the persons appearing in the video were indeed accused Argosino and Robles.
- f. The CCTV video was corroborated by the YouTube video, wherein accused Argosino and Robles, in the press conference on December 13, 2016, publicly admitted that they were in the City of Dreams when they received the total amount of ₱50 million from accused Lam, through accused Sombero. Accused Argosino even acknowledged the presence of CCTV cameras in the City of Dreams in said YouTube video.
- g. The *pro reo* rule finds no application in the matter of the ₱1,000.00 bills rejected by the money-counting machine. The actual reason for the rejection of the bills had not been established. Moreover, accused Argosino and Robles admitted that they received a total of ₱50 million from accused Lam, through accused Sombero.
- h. The Court correctly rejected accused Argosino's explanation that they received the money with the intention of using the same as evidence against accused Lam. If the intention was to use the money as evidence, the amount would have been kept intact.
- i. The Court did not prejudge accused Argosino and Robles when it denied their respective petitions for bail, and their motions for reconsideration. In the Court's Resolutions, the Court categorically stated that the rulings therein were not a prejudgment of the guilt of the accused. It merely determined the weight of the evidence for the purpose of bail.

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THE COURT'S RULING

The Court resolves to deny the Motions for Reconsideration of accused Argosino and Robles.

A. The alleged illegal deprivation of the accused' liberty

To determine if accused Argosino and Robles were illegally deprived of their liberty, this Court must discuss the nature of bail. Rule 114, Sec. 1 of the Rules of Court defines bail, thus:

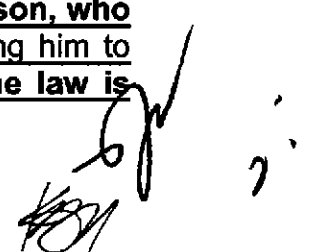
Sec. 1. Bail defined. – Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance.

(underscoring supplied)

From the aforequoted provision, it is apparent that before a person may be released on bail, such person must first be in custody of the law. The Supreme Court's discussion on the distinction between "custody of the law" and "jurisdiction over the person" in *Miranda v. Tuliao*,⁶ which further elaborated on the nature of "custody of the law," is enlightening. To wit:

Our pronouncement in *Santiago* shows a distinction between custody of the law and jurisdiction over the person. Custody of the law is required before the court can act upon the application for bail, but is not required for the adjudication of other reliefs sought by the defendant where the mere application therefor constitutes a waiver of the defense of lack of jurisdiction over the person of the accused. Custody of the law is accomplished either by arrest or voluntary surrender, while jurisdiction over the person of the accused is acquired upon his arrest or voluntary appearance. One can be under the custody of the law but not yet subject to the jurisdiction of the court over his person, such as when a person arrested by virtue of a warrant files a motion before arraignment to quash the warrant. On the other hand, one can be subject to the jurisdiction of the court over his person, and yet not be in the custody of the law, such as when an accused escapes custody after his trial has commenced. Being in the custody of the law signifies restraint on the person, who is thereby deprived of his own will and liberty, binding him to become obedient to the will of the law. Custody of the law is

⁶ G.R. No. 158763, March 31, 2006



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literally custody over the person of the accused. It includes, but is not limited to, detention.

The statement in *Pico v. Judge Combong, Jr.*, cited by the Court of Appeals should not have been separated from the issue in that case, which is the application for admission to bail of someone not yet in the custody of the law. The entire paragraph of our pronouncement in *Pico* reads:

A person applying for admission to bail must be in the custody of the law or otherwise deprived of his liberty. A person who has not submitted himself to the jurisdiction of the court has no right to invoke the processes of that court. Respondent Judge should have diligently ascertained the whereabouts of the applicant and that he indeed had jurisdiction over the body of the accused before considering the application for bail.

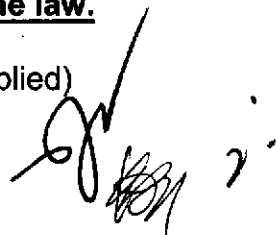
While we stand by our above pronouncement in *Pico* insofar as it concerns bail, we clarify that, as a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. As we held in the aforementioned case of *Santiago*, seeking an affirmative relief in court, whether in civil or criminal proceedings, constitutes voluntary appearance.

Pico deals with an application for bail, where there is the special requirement of the applicant being in the custody of the law. In *Feliciano v. Pasicolan*, we held that [t]he purpose of bail is to secure one's release and it would be incongruous to grant bail to one who is free. Thus, bail is the security required and given for the release of a person who is in the custody of law. The rationale behind this special rule on bail is that it discourages and prevents resort to the former pernicious practice wherein the accused could just send another in his stead to post his bail, without recognizing the jurisdiction of the court by his personal appearance therein and compliance with the requirements therefor.

x x x

To recapitulate what we have discussed so far, in criminal cases, jurisdiction over the person of the accused is deemed waived by the accused when he files any pleading seeking an affirmative relief, except in cases when he invokes the special jurisdiction of the court by impugning such jurisdiction over his person. Therefore, in narrow cases involving special appearances, an accused can invoke the processes of the court even though there is neither jurisdiction over the person nor custody of the law. **However, if a person invoking the special jurisdiction of the court applies for bail, he must first submit himself to the custody of the law.**

(emphasis and underscoring supplied)



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Here, it is undeniable that accused Argosino and Robles were not allowed to leave the Court's premises. However, it cannot be said that this was without basis. They went to this Court on April 10, 2018 to post bail in SB-18-CRM-0240, 0242 and 0243. Before this Court could have acted on their bail bonds, it was essential that they first be in custody of the law. At the time, no warrant of arrest had been issued against them. Their act of personally coming to Court for the purpose of posting bail—when no warrant of arrest had been issued—could only be interpreted as their voluntary surrender so they would be in custody of the law. While their bail bonds were being processed, they could not have been allowed to leave the premises because they were in custody of the law by virtue of their voluntary surrender.

Mr. Henry Villanueva of the Security and Sheriff Services could not be faulted for not allowing accused Argosino and Robles to leave the premises prior to the approval of their bail bonds because he was merely performing his official functions. The pertinent provisions of *The 2002 Revised Manual for Clerks of Court* read:

Chapter 04

x x x

D. FUNCTIONS AND DUTIES OF OFFICERS

x x x

4. Division Chiefs

x x x

4.4 Security Officer III (Chief, Security and Sheriff Services)

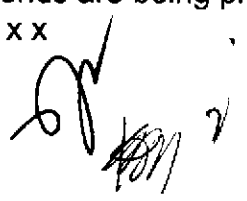
4.4.1. Adjudicative Support Functions

x x x

4.4.1.6. Takes custody of the accused who voluntarily surrendered and/or arrested by other law enforcement agencies;

4.4.1.7. Takes custody of the accused while their bail bonds are being processed;

x x x

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There being no illegal deprivation of their liberty, accused Argosino and Robles' claim that this Court's Justices orchestrated their illegal detention is baseless.

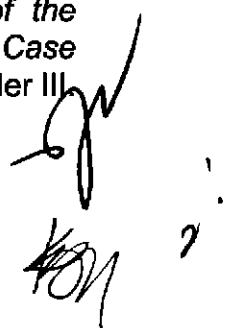
B. The alleged hasty resolution of accused Argosino's Omnibus Meritorious Motion and accused Robles' Omnibus Motion

Equally deserving scant consideration is accused Argosino and Robles' contention that their *Omnibus Meritorious Motion*⁷ and *Omnibus Motion*,⁸ respectively, were resolved with undue haste by reason of bias and prejudice on the part of this Court's Justices.

In view of their request to be allowed to post bail in SB-18-CRM-0240, 0242 and 0243, the Justices of the Special Sixth Division, then composed of Associate Justices Sarah Jane T. Fernandez, Karl B. Miranda, and Michael Frederick L. Musngi,⁹ met and, after determining the existence of probable cause, agreed to issue, and thereafter, released, the warrants of arrest in said cases. Thereafter, they proceeded to discuss the issue of probable cause in SB-18-CRM-0241, for Plunder, together with the Motions filed by the accused.

A cursory reading of the assailed unanimous¹⁰ Resolution dated April 10, 2018,¹¹ signed by Justices Fernandez, Miranda and Musngi, would show that said accused' Motions were denied on the ground that they were prohibited motions. For convenience, the pertinent portion¹² of the assailed Resolution dated April 10, 2018 is hereunder quoted:

The Court resolves to **DENY** the *Omnibus Motion 1. To Defer the Issuance of Warrant of Arrest and the Arraignment of the Accused; and x x x; or 3. To Order the Reinvestigation in this Case* of accused Michael B. Robles for being a prohibited motion under III

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⁷ Record, Vol. 3, pp. 32-117

⁸ Record, Vol. 3, pp. 118-142

⁹ Special Member of the Sixth Division, in view of the vacancy therein at the time (Per A.O. No. 057-2018 dated January 29, 2018)

¹⁰ Under Sec. 3 of Republic Act No. 10660, the concurrence of a majority of the members of a division—or two (2) votes—shall be sufficient to render a judgment, decision, or final order, or to resolve interlocutory or incidental motions.

¹¹ Record, Vol. 3, pp. 158-159

¹² *Ibid.*

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2. (b) i.,¹³ iii.¹⁴ and vi.¹⁵ of the Revised Guidelines for Continuous Trial of Criminal Cases.

An examination of the *Omnibus Motion* of accused Robles reveals that (1) his motion to defer the issuance of a warrant of arrest and his arraignment is akin to a motion for judicial determination of probable cause; and (2) his motion for reinvestigation is grounded on his innocence. His motion to dismiss will be set for hearing tomorrow, April 11, 2018, and will be the subject of a separate resolution.

The Court also ***DENIES*** the *Omnibus Meritorious Motion* (under Par. III, Sec. 2(c) of the Revised Guidelines for Continuous Trial) x x x; 2. *With Leave of Court, to Refer Case to OSP for Reinvestigation on the basis Of Newly-Discovered Evidence*; 3. *To Defer Issuance of Warrant*; and 4. *To Suspend Proceedings* of accused Al C. Argosino on the same grounds. His motion to quash will be set for hearing tomorrow, April 11, 2018, and will be the subject of a separate resolution.

x x x

Par. III. 2. (b) of The *Revised Guidelines for Continuous Trial of Criminal Cases*¹⁶ (Revised Guidelines) expressly and unequivocally provides for the course of action that a Court should take in resolving prohibited motions. viz.:

- (b) *Prohibited Motions.* – Prohibited motions shall be denied outright before the scheduled arraignment without need of comment and/or opposition.

This Court, in said Resolution, determined that the accused' Motions were prohibited motions, and accordingly denied them outright. Not satisfied with the Court's ruling on their Motions, accused Argosino and Robles filed their respective *Motions for Reconsideration*.¹⁷ This

¹³ Motion for judicial determination of probable cause.

¹⁴ Motion for reinvestigation of the prosecutor recommending the filing of information once the information has been filed before the court (1) if the motion is filed without prior leave of court; (2) when preliminary investigation is not required under Sec. 8, Rule 112; and (3) when the regular preliminary investigation is required and has been actually conducted, and the grounds relied upon in the motion are not meritorious, such as issues of credibility, admissibility of evidence, innocence of the accused, or lack of due process when the accused was actually notified, among others. (underscoring supplied)

¹⁵ Motion to suspend the arraignment based on grounds not stated under Sec. 11, Rule 116

¹⁶ A.M. No. 15-06-10-SC

¹⁷ *Motion for Reconsideration (Re: Minute Resolution dated 10 April 2018) -with Prayer to Recall/Quash the Warrant of Arrest* dated April 12, 2018, Record, Vol. 3, pp. 243-258 (accused Robles); *Motion for Reconsideration (Resolution dated 10 April 2018)* dated April 15, 2018, Record, Vol. 3, pp. 259-275 (accused Argosino)

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Court, in the Resolution dated May 31, 2018,¹⁸ denying their respective Motions for Reconsideration, expounded on the bases for its conclusion that their Motions were prohibited motions. The pertinent portion¹⁹ of said Resolution is hereunder quoted for convenience:

A. Accused' Argosino's Motion for Reconsideration

Accused Argosino contends that this Court erred in outright denying his *Omnibus Meritorious Motion* because his motion qualifies as a meritorious motion under the Revised Guidelines. His contention does not persuade.

Although his motion to quash on the ground that the facts charged do not constitute an offense is a meritorious motion,²⁰ his motions (1) to dismiss the case, (2) for reinvestigation, (3) for the deferment of the issuance of the warrant of arrest, and (4) to suspend proceedings squarely fall within the enumeration of prohibited motions under III. 2. (b) i. and iii. of the Revised Guidelines.

It is unmistakable that his motion to dismiss, and in connection therewith, his motion to defer the issuance of warrant of arrest, can be considered a motion for judicial determination of probable cause – a motion prohibited under III. 2. (b) i. of the Revised Guidelines. The pertinent portion of his *Omnibus Meritorious Motion* is hereunder quoted:²¹

In seeking to dismiss the instant case and/or to refer the case for further investigation under the above-cited rules of procedure, Accused Argosino likewise invokes the authority of the Honorable 4th Division, after evaluation of evidence on record, to dismiss the case under Section 6 of Rule 112 of the Revised Rules of Court, and to pertinently quote:

"Section 6. When warrant of arrest may issue.²² – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue

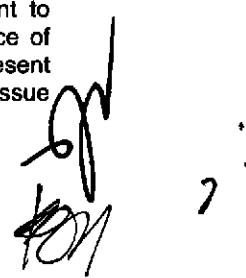
¹⁸ Record, Vol. 3, pp. 428-443

¹⁹ Resolution dated May 31, 2018, pp. 7-9; Record, Vol. 3, pp. 434-436

²⁰ III. 2. (c) v. of the Revised Guidelines

²¹ Record, pp. 35-36 (*Omnibus Meritorious Motion*, pp. 4-5)

²² Now Sec. 5

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must be resolved by the court within thirty (30) days from the filing of the complaint or information."

Dismissing a case on the abovesited ground necessarily entails the determination of the existence of probable cause. Accused Argosino, in his *Omnibus Meritorious Motion*, in essence, moved for a judicial determination of probable cause. Such motion is a mere superfluity because, with or without such motion, the Court is duty-bound to personally evaluate the Resolution of the Office of the Ombudsman and the supporting evidence.²³ This Court, in the assailed Resolution, performed such duty when it determined that there was probable cause for the issuance of a warrant of arrest against the accused.

His motion for reinvestigation, as well as his motion to suspend proceedings are prohibited motions under III. (2) b. iii. of the Revised Guidelines. The provision reads:

x x x

A plain reading of his arguments would show that he is praying for the reinvestigation of the case because, according to him, the Office of the Ombudsman disregarded certain affidavits that would establish facts supporting the innocence of the accused, *i.e.*, that the money was intended for bail of the detained Chinese nationals, and that there was no bribery or extortion.

The rest of his arguments pertain to his motion to quash, which is the subject of a separate resolution.

B. Motion for Reconsideration of accused Robles

For the same reasons as previously discussed, this Court finds no justification to warrant the reversal of its ruling as to the *Omnibus Motion* of accused Robles.

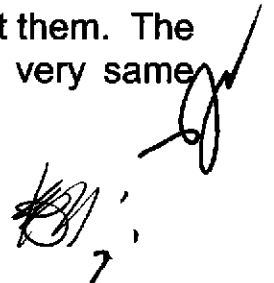
This Court will consider his Motion for Reconsideration as his motion to quash the Information on the ground that the facts charged do not constitute an offense. However, this Court resolves to deny the same.

x x x

Likewise, the pendency of the accused' *Motion to Quash* did not preclude this Court from issuing a warrant of arrest against them. The Supreme Court, in *De Lima v. Guerrero*,²⁴ resolved the very same

²³ Please see *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010

²⁴ G.R. No. 229781, October 10, 2017

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issue being raised by the accused, *i.e.*, whether or not the Court must first resolve the pending *Motion to Quash* before issuing a warrant of arrest. There, the Supreme Court found no grave abuse of discretion on the part of the respondent judge when she issued the Order finding probable cause to issue warrants of arrest against therein petitioner, without first resolving the petitioner's *Motion to Quash*. It was held in no uncertain terms that there is no rule or basic principle requiring the trial court to first resolve a motion to quash before issuing a warrant of arrest. *viz.*:

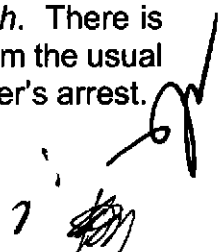
In the present case, the respondent judge had no *positive duty* to first resolve the *Motion to Quash* before issuing a warrant of arrest. There is no rule of procedure, statute, or jurisprudence to support the petitioner's claim. Rather, Sec. 5(a), Rule 112 of the Rules of Court required the respondent judge to evaluate the prosecutor's resolution and its supporting evidence within a limited period of only ten (10) days, *viz.*:

x x x

It is not far-fetched to conclude, therefore, that had the respondent judge waited longer and first attended to the petitioner's *Motion to Quash*, she would have exposed herself to a possible administrative liability for failure to observe Sec. 5(a), Rule 112 of the Rules of Court. Her exercise of discretion was sound and in conformity with the provisions of the Rules of Court considering that a *Motion to Quash* may be filed and, thus resolved by a trial court judge, at any time before the accused petitioner enters her plea. What is more, it is in accord with this Court's ruling in *Marcos v. Cabrera-Faller* that "[a]s the presiding judge, it was her task, upon the filing of the Information, to first and foremost determine the existence or non-existence of probable cause for the arrest of the accused."

This Court's ruling in *Miranda v. Tuliao* does not support the petitioner's position. *Miranda* does not prevent a trial court from ordering the arrest of an accused even pending a motion to quash the information. At most, it simply explains that an accused can seek judicial relief even if he has not yet been taken in the custody of law.

Undoubtedly, contrary to petitioner's postulation, there is no rule or basic principle requiring a trial judge to first resolve a motion to quash, whether grounded on lack of jurisdiction or not, before issuing a warrant of arrest. As such, respondent judge committed no grave abuse of discretion in issuing the assailed February 23, 2017 Order even before resolving petitioner's *Motion to Quash*. There is certainly no indication that respondent judge deviated from the usual procedure in finding probable cause to issue the petitioner's arrest.

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Finally, as to this point, it bears stressing that courts determine the nature and the merits of a motion based on the averments and the reliefs sought therein. A different label does not change the true nature of the pleading or motion which has been presented.²⁵ An unmeritorious motion does become meritorious simply because it is named "Meritorious Motion."

C. The issuance of the commitment order

The Commitment Order²⁶ shows that it was issued only on April 10, 2018, with Justice Fernandez being the sole signatory thereto. The news article stating "that a commitment order had been issued 'since last week,' but lacked the signature of an Associate Justice who was out of town" may have been a lapse on the part of Atty. Ferrer when she may have been referring to a different document, or it may have been a result of her being misquoted or misinterpreted by the writer of the news article which accused Argosino cited.

D. The denial of accused Argosino's Motion to Quash after the amendment of the Information for Plunder

Although the prosecution filed its *Urgent Motion to Admit Amended Information* on May 18, 2018,²⁷ the Resolution granting the prosecution's Motion, and admitting said Amended Information was not issued until June 4, 2018.²⁸ When the Court promulgated the Resolution²⁹ denying accused Argosino's *Motion to Quash* on May 29, 2018, the Information in SB-18-CRM-0241 had not yet been amended.

It must be pointed out that the amendment of the Information did not affect the matters raised in accused Argosino's *Motion to Quash*. In his said Motion, he mainly argued that the Information did not allege a series or combination of overt or criminal acts that would constitute Plunder. But the allegations in the original Information and in the Amended Information are substantially the same, except for the

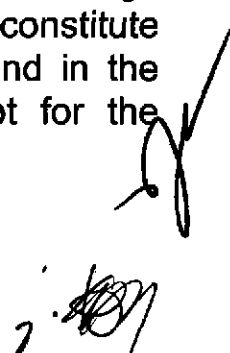
²⁵ Please see *Godoy v. Court of Appeals*, G.R. No. 80814, August 30, 1988

²⁶ Record, Vol. 3, pp. 160-161

²⁷ Record, Vol. 3, p. 379

²⁸ Record, Vol. 3, p. 453

²⁹ Record, Vol. 3, pp. 414-424



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allegation in the Amended Information that accused Argosino was the "main plunderer."

At any rate, during the hearing of said *Urgent Motion* on May 22, 2018, accused Argosino was represented by Attys. Ahmed Joseph Yu and Wesley Young; accused Robles was represented by Attys. Godfrey V. Camaligan and Hans Santos; and accused Sombero was represented by Atty. Jesi Howard S. Lanete.³⁰

Accused Robles, through counsel, manifested that he would not oppose the prosecution's *Urgent Motion*, but would file the necessary pleadings after the admission of the Amended Information. Accused Argosino, through counsel, requested to be allowed to file his comment to the prosecution's Motion. Finally, accused Sombero, through counsel, manifested his intention to file a Motion to Quash the Amended Information. After giving the accused the opportunity to be heard, this Court gave accused Argosino five (5) days to file his comment to the prosecution's Motion, and as to accused Sombero's manifestation, recognized that it was the accused' right to file such motion. The pertinent portion³¹ of the TSN reads:

CHAIRPERSON

Proceed.

ATTY. SANTOS

Your Honors please, in order to abbreviate the proceedings in this case, accused Robles will no longer file any opposition to the Urgent Motion to Admit Amended Information. He will just file the necessary pleadings, allowed under the rules once the Motion to Admit Amended Complaint is granted.

CHAIRPERSON

So you have no objection to the Urgent Motion to Admit Amended Information?

ATTY. SANTOS

No objection, Your Honors.

CHAIRPERSON

For accused Argosino?

ATTY. [YU]³²

³⁰ Record, Vol. 3, p. 398; TSN, May 22, 2018, p. 3

³¹ TSN, May 22, 2018, pp. 4-5

³² Atty. Ahmed Joseph Yu was mistakenly referred to as "Atty. Tiu."

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Your Honors may we be allowed to file our comment to the motion?

CHAIRPERSON

Within?

ATTY. TIU

Five (5) days, Your Honors.

CHAIRPERSON

Five (5) days from today. How about for accused Sombero?

ATTY. LANETE

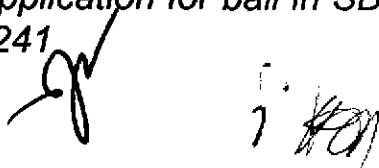
Good afternoon, Your Honors as far as accused Sombero is concern[ed], we leave the Urgent Motion to the sound discretion of the Honorable Court, however we would like to manifest, Your Honors that once the Honorable Court will issue a resolution, as far as the Motion is concern[ed], we will just file a Motion to Quash the Amended Information, Your Honors.

CHAIRPERSON

That will be the right of the accused.

Having recognized the accused' right to file their motions to quash the Amended Information, this Court would have acted on the same—as it was this Court's duty to do so—had the accused in fact filed their respective motions. However, none of the accused filed a motion to quash the Amended Information after it was admitted in the Resolution dated June 4, 2018—not even accused Sombero and Robles, who manifested their intention of filing said Motion or any other necessary pleading. Neither did any of the accused withdraw their respective motions to quash after the filing of the prosecution's *Urgent Motion*. Accused Argosino cannot now impute partiality and bias on the part of this Court's Justices when this Court resolved his *Motion to Quash* after the filing of the prosecution's *Urgent Motion*, but prior to the admission of the Amended Information. Notably, accused Argosino did not file a motion for reconsideration of the Resolution dated May 29, 2018 denying his *Motion to Quash*.

E. Specific portions of the Resolution denying accused Argosino's Motion to Quash, and the Resolution denying the accused' application for bail in SB-18-CRM-0241

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At the risk of repetition, this Court must reiterate that allegedly erroneous adverse rulings, by themselves, do not sufficiently prove bias and prejudice to disqualify a Judge or Justice. Such bias and partiality must be established by extrinsic evidence. In *Webb v. People*,³³ it was held:

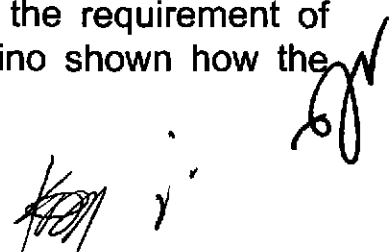
To prove bias and prejudice on the part of respondent judge, petitioners harp on the alleged adverse and erroneous rulings of respondent judge on their various motions. By themselves, however, they do not sufficiently prove bias and prejudice to disqualify respondent judge. To be disqualifying, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, although erroneous, as long as they are based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge. As a general rule, repeated rulings against a litigant, no matter how erroneous and vigorously and consistently expressed, are not a basis for disqualification of a judge on grounds of bias and prejudice. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error which may be inferred from the decision or order itself. Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.

x x x

We hasten to stress that a party aggrieved by erroneous interlocutory rulings in the course of a trial is not without remedy. The range of remedy is provided in our Rules of Court and we need not make an elongated discourse on the subject. But certainly, the remedy for erroneous rulings, absent any extrinsic evidence of malice or bad faith, is not the outright disqualification of the judge. For there is yet to come a judge with the omniscience to issue rulings that are always infallible. The courts will close shop if we disqualify judges who err for we all err.

Here, in an attempt to show bias and partiality on the part of this Court's Justices, accused Argosino quoted specific portions of this Court's Resolutions. But this still falls short of the requirement of extrinsic evidence. Neither has accused Argosino shown how the

³³ G.R. No. 127262, July 24, 1997



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Court's rulings—when read in relation to the Court's other findings in its Resolutions—are grossly and patently erroneous, indicating bad faith or malice on the part of this Court's Justices. This Court need not belabor its reasoning for its rulings in said Resolutions. Said Resolutions contain the factual and legal bases for the Court's rulings. If accused Argosino believes that this Court erroneously ruled on his Motions, he is not without remedy because it is his right to, and he may, as held in *Webb*, avail of the appropriate remedies under the Rules of Court.

WHEREFORE, the Court rules as follows:

1. Accused Robles' *Motion for Reconsideration* is hereby DENIED for lack of merit.
2. Accused Argosino's *Motion for Reconsideration* is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


ZALDY V. TRESPESSES
Associate Justice