



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0118 to 0119
For: Violation of Sec. 3(e) of
R.A. 3019

- versus -

AMADO T. ESPINO, et al.,
Accused.

Present:

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

SEP 09 2019

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RESOLUTION

VIVERO, J.:

For resolution is accused Alvin Lagrimas Bigay's *Suspension Pendete Life*.

This Court, in its Minute Resolution¹ dated 3 July 2019 and pursuant to Section 4, Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan, directed accused Bigay, an incumbent Provincial Housing and Homesite Regulation Officer of the Province of Pangasinan, to show cause within a non-extendible period of ten (10) days from receipt of such Order why he should not be suspended *pende lite* in accordance with Section 13 of Republic Act No. 3019.

In his Comment/Explanation dated 22 July 2019, accused Bigay argues that he was already effectively suspended when he was

¹ Record, Vol. 6, p. 322.

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dismissed from his position on 12 December 2014, by virtue of the Joint Resolution of the Office of the Ombudsman, until he was able to resume his position on 28 May 2018, by reason of the dismissal of the administrative case against him by the Court of Appeals. Accused further argues that the purpose of suspension pendete lite is moot because the prosecution has already collated, presented and offered all of its evidence and witnesses against him, thus, he cannot in any way frustrate or hamper the prosecution's presentation. In addition, if the purpose of a preventive suspension is to enable the investigating authority to gather documents without intervention from him, it could thus be submitted that this purpose was already achieved during his nearly five-year absence from Provincial Housing and Urban Development Coordinating Office.

RULING

The Court does not find merit in accused Bigay's arguments.

In **Gerardo R. Villaseñor and Rodel A. Mesa vs. Sandiganbayan (5th Division) and Louella Mae Oco-Pesquerra (Office of the Special Prosecutor, Ombudsman)**², the Supreme Court ruled:

It is clear, then, that criminal and administrative cases are distinct from each other. The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa. Verily, administrative cases may proceed independently of criminal proceedings.

Socrates v. Sandiganbayan³, citing the Court's pronouncements in **Luciano v. Provincial Governor**⁴, recounted:

The Court then hastened to clarify that such a view may not be taken as an encroachment upon the power of suspension given other officials, reiterating in the process that a line should be drawn between administrative proceedings

² G.R. No. 180700, 4 March 2008.

³ G.R. Nos. 116259-60, 20 February 1996, 253 SCRA 773.

⁴ G.R. No. L-30306, June 20, 1969, 28 SCRA 517.



X----- X

and criminal actions in court, that one is apart from the other. x
x x (Underscoring supplied)

Based on the foregoing, criminal actions will not preclude administrative proceedings, and vice-versa, insofar as the application of the law on preventive suspension is concerned.

Clearly, an administrative case filed before the Office of the Ombudsman and the criminal case before the trial court are separate and distinct from each other even if they arise from the same act or omission.⁵

Moreover, accused-movant's dismissal from his position from 12 December 2014 up to 28 May 2018 by virtue of the Joint Resolution of the Office of the Ombudsman in an earlier administrative case filed against him is a penalty which is entirely different and distinct from a preventive suspension which is here being considered to be imposed against him in this case. That the said administrative case was subsequently dismissed by the Court of Appeals, and that he was reinstated by virtue thereof is of no moment and will not alter the nature of the aforesaid penalty.

The Supreme Court's ruling in *Quimbo vs. Gervacio*⁶ is enlightening:

Jurisprudential law establishes a clear-cut distinction between suspension as preventive measure and suspension as penalty. The distinction, by considering the purpose aspect of the suspensions, is readily cognizable as they have different ends sought to be achieved.

Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him.¹⁶ If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his suspension or removal, then he is suspended, removed or dismissed. This is the penalty.

⁵ Gonzales vs. Serrano, G.R. No. 175433, 11 March 2015.

⁶ G.R. No. 155620, 9 August 2005, 466 SCRA 277.



RESOLUTION

People vs. Espino, et al.

Criminal Cases No. SB-16-CRM-0118 to 0119

Page 4 of 6

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That preventive suspension is not a penalty is in fact explicitly provided by Section 24 of Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292) and other Pertinent Civil Service Laws.

In *Flores, et al., vs. Layosa, et al.*,⁷ the Supreme Court held:

"It is settled that once a court determines that the information charging a public officer with an offense under R.A. No. 3019 or Title 7, Book II of the Revised Penal Code, or any other offense involving fraud upon government or public funds or property is valid, it is bound to issue an order of preventive suspension of the accused public officer as a matter of course."

Section 13 of R.A. 3019 provides:

Section 13. Suspension and loss of benefits. — Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title Seven Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as complex offense and in whatever stage of execution and mode of participation, is pending in court shall be suspended from office. Should he be convinced by final judgement, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him. In the event that such convicted officer, who may have been separated from the service has already received such benefits he shall be liable to retribute the same to the government.

In fine, to warrant a preventive suspension, the following conditions must be present: (1) the accused is an incumbent public official; and (2) the accused is charged under a valid information which involves a violation of R.A. No. 3019, felonies under Title Seven, Book Two of the Revised Penal Code, or for any offense involving fraud upon the government.

⁷ G.R. No. 154714, 12 August 2004.



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Record shows that the accused is the incumbent officer of Provincial Housing and Homesite Regulation Officer of the Province of Pangasinan, and is charged with violation of Sec. 3(e) of R.A. 3019.

Under the obtaining facts, all the requisites for suspension under Section 13 of R.A. No. 3019 being present, it becomes the mandatory duty of the Court to suspend the accused.

The mandatory nature of preventive suspension under R.A. No. 3019 was emphasized in *Beroña, et al., vs. Sandiganbayan*,⁸ to wit:

Section 13 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Section 13 unequivocally mandates the suspension of a public official from office pending a criminal prosecution under RA 3019 or Title 7, Book II of the Revised Penal Code or for any offense involving public funds or property or fraud on government. This Court has repeatedly held that such preventive suspension is mandatory, and there are no 'ifs' and 'buts' about it.

Lastly, preventive suspension under Section 13 of R.A. No. 3019 being mandatory, the court possesses no discretion to determine whether a preventive suspension is necessary to forestall the possibility that the accused may use his office to intimidate witnesses, or frustrate his prosecution, or continue committing malfeasance.⁹

WHEREFORE, premises considered, the Court hereby orders the suspension *pendete lite*, for a period of ninety (90) days, of accused Alvin Lagrimas Bigay, as Provincial Housing and Homesite Regulation Officer of the Province of Pangasinan, and from any other public position the accused may now or hereafter hold.

Accused Bigay shall immediately cease and desist from performing the functions of his office upon the implementation of this *Order of Preventive Suspension*. The suspension of the accused shall automatically be lifted upon the expiration of the 90-day period from the implementation of this resolution.

⁸ G.R. No. 142456, 27 July 2004.

⁹ Dela Cruz vs. Sandiganbayan, G.R. No. 161929, 8 December 2009.



RESOLUTION

People vs. Espino, et al.

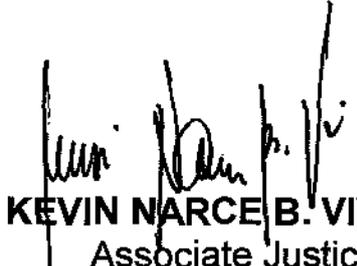
Criminal Cases No. SB-16-CRM-0118 to 0119

Page 6 of 6

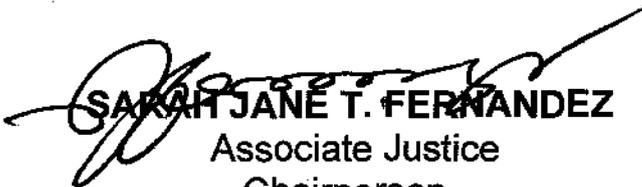
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Let a copy of this Resolution be furnished the Secretary of the Interior and Local Government for the implementation of this order of suspension. The Secretary of DILG is directed to inform the Court of the action taken within fifteen (15) days from receipt hereof.

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KARL B. MIRANDA
Associate Justice