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In view of the lack of any derogatory record in respondent's long service of about 27 years, the Court is inclined to view respondent's grave transgressions in a spirit of leniency pursuant to the investigating judge's recommendation.

ACCORDINGLY, respondent is hereby ordered SUSPENDED for three (3) months without pay and warned that a repetition of the same or similar acts in the future will merit severe disciplinary action.

SO ORDERED.

Makalintal, C.J., Ruiz Castro, Makasiar, Esguerra, and *Muñoz Palma, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-211. May 31, 1974]

DR. QUINTIN DE DIOS SANTOS, *complainant, vs.* **ALBERTO A. VALINO,** Deputy Sheriff, Pasig, Rizal, *respondent.*

SYLLABUS

ADMINISTRATIVE PROCEEDINGS; COMPLAINT AGAINST DEPUTY SHERIFF; CHARGE OF INJUDICIOUS IMPLEMENTATION OF ORDER OF DEMOLITION; NO ABUSE OF JUDICIAL PROCESS WAS COMMITTED IN INSTANT CASE.— The complaint against respondent Deputy Sheriff is that his implementation of the order of demolition at the peak of the Christmas holidays and with knowledge of the fact that a motion to hold it in abeyance was pending before the court which granted it, was injudicious. The Court of First Instance to whom the case was referred for investigation and report, recommended the dismissal of the complaint in view of its findings that "respondent committee committed no abuse in carrying out the order of demolition since, up to time he enforced it, the order had not been countermanded or recalled

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by the court that issued it," and that "if the execution of a lawful writ, order or process of the courts can be postponed by the mere filing of a motion to hold it in abeyance, parties may, by the simple expedient of filing such motions, motions for reconsiderations, motions for new trials, appeals, etc., however frivolous and unfounded, would be able to frustrate and delay the execution of final judgments of the courts." Held. - This Court agrees with the said court's findings that, contrary to the complainant's charge, there has been no injudicious implementation by the respondent of the order of demolition of the complainant's house, and the recommendation that the administrative complaint against him be dismissed.

RESOLUTION

FERNANDEZ, *J.*:

We agree with the Judge Carolina C. Griño-Aquino's[1] finding that, contrary to the complainant's charge, there has been no injudicious implementation by the respondent of the order of demolition of the complainant's house, and the recommendation that the administrative complaint against the respondent be dismissed.

In the case filed by the trustee of the heirs of Nieves Tuason de Barretto against Quintin De Dios Santos, present complainant, the Municipal Court of Marikina, Rizal, rendered a judgment ordering De Dios to vacate the lot belonging to the plaintiff and being occupied by him. This decision, rendered in 1963, was affirmed by the Court of First Instance of Quezon City in the same year, and by the Court of Appeals in 1971. A petition for certiorari to review the decision of the Court of Appeals was denied by the Supreme Court in 1972.

On September 18, 1972, an order of demolition was issued by Judge Pacifico de Castro of the Court of First Instance of

[1] Of the Court of First Instance of Rizal, to whom the case was referred for investigation and report.

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Rizal, Quezon City branch. Respondent gave the herein complainant one week within which to vacate the lot. On December 13, 1972, Judge De Castro rendered another order directing the Sheriff "to immediately enforce the order of demolition, dated September 18, 1972." Respondent notified the complainant of said order of the court on December 27, 1972 and informed him that the demolition order would be implemented on December 29, 1972. On the said date, demolition was began but not finished. On January 2, 1973, for humanitarian reasons, the Court gave the complainant thirty (30) days from January 27, 1973 within which to voluntarily demolish his improvements or what remained of them. In the meantime, complainant sold his house to the representative of the plaintiff in the ejectment suit.

As has been held by Judge Carolina C. Griño-Aquino, to which We concur:

"Generally, litigants complain against the sluggishness or neglect of deputy sheriffs in enforcing writs and processes delivered to them for execution. In this case, the complaint is that the implementation of the order of demolition by Valino on December 29, 1972, at the peak of the Christmas holidays and with knowledge of the fact that a motion to hold it in abeyance was pending before the court which might possibly, as it did, grant it, was injudicious.

> 'As a general rule a sheriff should execute a writ without delay and within a reasonable time after he receives it, although it has been held that in the absence of special circumstances a sheriff has until the return day in which to make service of process. At any rate, in the absence of directions by plaintiff in the writ, or knowledge of special circumstances requiring greater diligence, execution of the writ within the time allowed by law is sufficient. Where a sheriff has knowledge or reasonable ground to believe that there will be danger of loss to the creditor through delay in the execution of a writ, it is his duty to execute it immediately.' (80 C.J.S. 216)

"While it is true that Valino, in the spirit of Christmas, could have postponed until after New Year's Day the implementation of the order of demolition without much damage or prejudice to the plaintiff, nevertheless, since all that he did was to follow the letter and spirit

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of the order of the Court, as well as the advice of his immediate chief, Provincial Sheriff Salaysay (to give De Dios two days to vacate) it cannot be said, considering the antecedents and circumstances of the case, that he acted injudiciously in doing so.

"A sheriff is a ministerial officer. When the terms of a writ or order delivered to him for execution are clear, his duty is to enforce it. There is no room for the exercise of discretion on his part.

> 'It is the sheriff's duty to act promptly and in accordance with the mandate of the court. It is improper for a sheriff to modify the writ delivered to him for execution as to the time of such execution.' (Skulason *vs.* Pratt, 130 Pac. 2d 17).

"Valino committed no abuse in carrying out the order of demolition since, up to the time he enforced it, the order had not been countermanded or recalled by the Court that issued it. If the execution of a lawful writ, order or process of the courts can be postponed by the mere filing of a motion to hold it in abeyance, parties may, by the simple expedient of filing such motions, motions for reconsideration, motions for new trial, appeals, etc., however frivolous and unfounded, would be able to frustrate and delay the execution of final judgments of the courts. Through such tactics, despite the summary nature of an ejectment suit, the complainant De Dios was able to deprive the heirs of Nieves Tuason of the possession of their property for nearly ten (10) years. In the last analysis, it was because of his intransigence of obduracy that the final implementation of the order of demolition caught him in the midst of the Christmas holidays. If there was abuse of the judicial process, it was committed by De Dios, not by Valino."

IN VIEW OF ALL THE FOREGOING, the administrative complaint filed by the complainant against the respondent Alberto A. Valino is hereby dismissed.

Zaldivar (Chairman), Fernando, Barredo, and *Antonio, JJ.* concur.

Aquino, J., did not take part.