Supreme Court E-Library

EN BANC

[A.M. No. RTJ-15-2426. June 16, 2015]
(Formerly A.M. No. 05-3-83-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE ALEXANDER BALUT,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; IN ADMINISTRATIVE CASES, THE QUANTUM OF PROOF NECESSARY IS SUBSTANTIAL EVIDENCE OR SUCH RELEVANT EVIDENCE AS A REASONABLE MIND MAY ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION.—** In administrative cases, the quantum of proof necessary is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The standard of substantial evidence is justified when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence is not overwhelming or even preponderant.

2. **ID.; DISCIPLINE OF JUDGES; THE ACT OF MISAPPROPRIATING COURT FUNDS CONSTITUTES DISHONESTY AND GRAVE MISCONDUCT, PUNISHABLE BY DISMISSAL FROM THE SERVICE EVEN ON THE FIRST OFFENSE; CASE AT BAR.—** Once again, the Court stresses that judges must adhere to the highest tenets of judicial conduct. Because of the sensitivity of his position, a judge is required to exhibit, at all times, the highest degree of honesty and integrity and to observe exacting standards of morality, decency and competence. He should adhere to the highest standards of public accountability lest his action erode the public faith in the Judiciary. Judge Balut fell short of this standard for borrowing money from the collections of the court. He knowingly and deliberately made the clerks of court violate the circulars on the proper administration of court funds. He miserably failed to become a role model of his staff and other court personnel in the observance of the standards of morality

Supreme Court E-Library

and decency, both in his official and personal conduct. The act of misappropriating court funds constitutes dishonesty and grave misconduct, punishable by dismissal from the service even on the first offense. For said reason, the respondent deserves a penalty no lighter than dismissal. This Court has never tolerated and will never condone any conduct which violates the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system.

3. ID.; ID.; ID.; THE FACT THAT A JUDGE FULLY PAID HIS CASH LIABILITIES WILL NOT SHIELD HIM FROM THE CONSEQUENCE OF HIS WRONGDOINGS; PENALTY.— The fact that Judge Balut fully paid his cash liabilities will not shield him from the consequences of his wrongdoings. His unwarranted interference in the Court collections deserves administrative sanction and not even the full payment of his accountabilities will exempt him from liability. "**It matters not that these personal borrowings were paid as what counts is the fact that these funds were used outside of official business**." Similarly, his nearly 22 years in the service would not serve to mitigate his liability. His offense was not a single or isolated act but it constituted a series of acts committed in a span of several years. In other words, he was **a repeated offender, perpetrating his misdeeds with impunity not once, not twice, but several times in three (3) different stations**. x x x **WHEREFORE,** finding Judge Alexander Balut **GUILTY** of gross misconduct, the Court hereby imposes upon him the penalty of **DISMISSAL** from the service, with forfeiture of all retirement benefits and with prejudice to re-employment in any branch of the government, including government- owned and controlled corporations, except the money value of accrued earned leave credits.

BERSAMIN, *J.*, *dissenting opinion*:

REMEDIAL LAW; DISCIPLINE OF JUDGES; THE BENEVOLENCE OCCASIONALLY EXHIBITED BY THE COURT FINDS LEGAL BASIS IN THE POSTULATE THAT THE DISCIPLINING AUTHORITY HAS THE DISCRETION TO CONSIDER MITIGATING CIRCUMSTANCES IN THE IMPOSITION OF THE PROPER PENALTY; ESTABLISHED IN CASE AT BAR.— I respctfully urge that the court takes note of certain

Supreme Court E-Library

circumstances that humbly suggest should be considered and treated as mitigating circumstances to temper the supreme penalty of dismissal from the service to a lesser penalty. The **first** is that respondent Judge had apparently no intention to misappropriate or steal the funds. He willingly signed for the "borrowings," thereby evincing the lack of the intention to appropriate the funds for himself. He also issued certifications of his "borrowings." The implication of his doing so is that he intended all along to repay the "borrowings." The **second** is that respondent Judge already returned the funds he had "borrowed." x x x The restitution of the "borrowed." funds can be taken as a mitigating factor in favor of respondent Judge. x x x The **third** is that respondent Judge has been in the service for nearly 22 years now. x x x The safekeeping of collected funds is essential to the goal of an orderly administration of justice, and no protestation of good faith can override the mandatory nature of circulars designed to promote full accountability for government funds. But while this Court has sternly disciplined, and deservedly so, personnel in its ranks, warning that the act of misappropriating judiciary funds constitutes dishonesty and grave misconduct punishable by dismissal from service even on the first offense, it has time and again estended nevertheless its benevolence to reduce the imposable penalty. The benevolence occasionally exhibited by the Court finds legal basis in the postulate that the disciplining authority has the discretion to consider mitigating circumstances in the imposition of the proper penalty.

R E S O L U T I O N

***PER CURIAM*:**

On October 9, 2007, the Court partially resolved this case by disposing it as follows:

WHEREFORE the Court finds and declares:

1. Judge Alexander S. Balut **GUILTY** of undue delay in deciding 33 cases submitted for decision and in failing to resolve 101 motions within the 90-day reglementary period. He is **FINED** twenty thousand pesos (₱20,000.00), with a stern

Supreme Court E-Library

warning that a repetition of the same shall be dealt with more severely.

2. Judith En. Salimpade **GUILTY** of gross neglect of duty, dishonesty and grave misconduct. She is DISMISSED from the service. She is **DIRECTED** to **RESTITUTE** the amount of ₱1,817,378.59 representing the amount of shortages in her collections. Her withheld salaries are to be applied to her accountabilities. The Office of Administrative Services, OCA is **DIRECTED** to compute Ms. Salimpade's leave credits and forward the same to the Finance Division, Fiscal Management Office-OCA which shall compute the money value of the same, the amount to be deducted from the shortages to be restituted.

3. Eduardo Esconde **GUILTY** of gross neglect of duty. He is **DISMISSED** from the service. He is also **ORDERED** to restitute his accountabilities in the amount of ₱58,100.00

4. Lydia O. Ramos **GUILTY** of neglect of duty. She is **FINED** ₱5,000, which should be deducted from her retirement benefits.

The Office of the Court Administrator Legal Office is **DIRECTED** to file appropriate criminal charges against Judge Alexander Balut, Judith En. Salimpade and Eduardo Esconde.

SO ORDERED.

As stated in the October 9, 2007 Resolution, the facts of the case are as follows:

On May 3, 2003, the Office of the Court Administrator (OCA) conducted a judicial audit and physical inventory of cases at the Municipal Trial Courts (MTCs) of Bayombong and Solano, Nueva Vizcaya. Judge Alexander S. Balut was the acting presiding judge in both courts.

x x x x x x x x x

Aside from the judicial audit, a financial audit was also conducted in the MTCs of Bayombong and Solano as well as the MCTC of Aritao-Sta. Fe.

In the MTC, Bayombong, where Judith En. Salimpade was Clerk of Court II, the audit team found an unremitted amount of ₱18,702.00 representing the court's collection from August 3, 2003 to August

Supreme Court E-Library

18, 2003. Said amount was deposited only on August 18, 2003, upon advise by the audit team, in the Land Bank of the Philippines account. Furthermore, 31 booklets of accountable forms issued to Ms. Salimpade by the Property Division, SC and OCA were not accounted for. Also, the court had a total Judiciary Development Fund (JDF) collection of ₱348,993.60 from January 1990 to August 2003. However, only ₱186,330.98 was remitted by Ms. Salimpade leaving a balance of ₱162,662.62; the total Clerk of Court General Fund (CCGF) collections from January 1996 to August 2003 (audit scope) showed an unremitted amount of ₱30,411.70; and as of August 31, 2003 the Fiduciary Fund had a total cash shortage of ₱1,864,304.27 which covered the collections from 1995 to August 2003.

In sum, the shortages in the various funds incurred by Salimpade as of August 31, 2003 totalled ₱2,057,378.59.

Salimpade, when asked about the shortages, **explained that Judge Balut, since 1995 had been getting money from the JDF collections.** She had given in to the requests of Judge Balut out of fear of him. She also admitted that she lent her co-employees money which she took from her collections.

Parenthetically, in September 2003, **Judge Balut turned over ₱240,000.00 to Salimpade and the latter issued a certification stating that the former had completely settled his monetary accountability** to the MTC, Bayombong. Judge Balut delivered to the Fiscal Monitoring Division, Court Management Office (CMO) OCA the **certification** and **deposit slip** evidencing the turnover of the ₱240,000.00.

The audit team also found that Salimpade failed to regularly submit her monthly report of collections, as required in Supreme Court Circular No. 32-93. Consequently, Salimpade's salaries were withheld effective August 2003 to the present.

In the MTC, Solano, the spot cash count on the court's collection disclosed that Eduardo Esconde, Clerk of Court, had an unremitted/ undeposited cash on hand amounting to ₱59,545.00. However, the Official Receipts issued to cover said amounts were not accounted for. The said cash amount was deposited on August 21, 2003 to Land Bank JDF Account No. 0591-0116-34.

A review of the receipts on file from May 2001 to July 2003 also showed a total cash shortage of ₱106,527.80. However, on August 29, 2003, Esconde deposited in the CCGF and JDF bank accounts

Supreme Court E-Library

sums corresponding to the said shortage. **Esconde explained to the audit team that Judge Balut borrowed various amounts from the collections.** He stated that Judge Balut started borrowing funds when the former was still the Clerk of Court of MCTC, Aritao-Sta. Fe. **He transferred to MTC, Solano, to get out of the shadow of Judge Balut. But, much to his dismay, Judge Balut was designated Acting Presiding Judge of MTC, Solano and continued the practice of borrowing money from the collections of the court.**

In the MCTC, Aritao-Sta. Fe, the audit team found that Lydia Ramos, Clerk of Court, succeeded Eduardo S. Esconde on July 16, 2000, without proper turnover of accountabilities. The team also found that the amount of ₱540.00, part of the JDF collections from August 1, 2003 to August 21, 2003, remained undeposited at the time of audit. Said amount was remitted to the Chief Accountant, Supreme Court on September 10, 2003. Also, Mrs. Ramos opened an account at the Rural Bank of Aritao, Inc. for the Fiduciary Fund of the court instead of maintaining an account with Landbank. Said account was closed on September 11, 2003 and an account was opened at Landbank, Bambang, on the same date. A comparison of the court's CCGF collections and remittances for the period of November 1995 to July 2003 revealed a shortage of ₱510.00. Mr. Esconde incurred during his incumbency a cash shortage of ₱430.00 while Mrs. Ramos incurred a shortage of ₱80.00 as of July 31, 2003. From August 2003 to June 5, 2004, Mrs. Ramos incurred a shortage of ₱430.00. She deposited the amount of ₱400.00 on August 23, 2004 leaving a shortage of ₱30.00. Withdrawals from the Fiduciary Fund account on various dates, totalling ₱243,900.00 for the refund and return of cash bonds to 20 litigants, were not supported by any official court orders. Of the 20 litigants 15 did not acknowledge receipt of the amount refunded. The Fiduciary Fund collection of the court from April 1996 to August 31, 2003 amounted to ₱2,064,978.00. As of August 31, 2003, however, the amount of ₱846,710.00 was unaccounted for by Mr. Esconde and Mrs. Ramos. Both denied that the shortages incurred were of their own doing and they instead pointed to Judge Balut as the offender.

Ramos related to the audit team the constant **requests/orders of Judge Balut to hand over to him money from the Fiduciary Fund collections.** In these instances, she requested Judge Balut to **affix** his **signature** at the back portion of the withdrawal slips as the cash recipient. However, not all of the transactions were evidenced by an acknowledgement receipt. Ramos further stated that **Judge Balut also collected the money through Salvador Briones,** Court Interpreter

Supreme Court E-Library

of MCTC-Aritao-Sta. Fe, whose signature also appeared at the back portion of withdrawal slips as cash recipient. The **total withdrawals from the Fiduciary Fund Account given to Judge Balut, as evidenced by withdrawal slips bearing the signatures of Judge Balut and Briones, for the benefit of the former, as cash recipients, amounted to ₱193,500.00**.

Aside from these, withdrawals from the Fiduciary Fund account totalling ₱90,500.00 were also **given to Judge Balut**. On the face of the slips of this class of withdrawals were notations such as "**Judge**," "**for Judge,**" "**taken by Judge xxx**" and "**given to Judge**" written by Ramos.

On May 9, 2002, **Judge Balut issued a Certification stating that his accountability with the Fiduciary Fund collection of MCTC Aritao-Sta. Fe as of April 2002 amounted to ₱207,774.42.**

However, before the final report on the court's shortages was completed, various amounts totalling ₱802,299.82 were **deposited by Judge Balut**, Esconde and Ramos in the court's LBP Account No. 3251-0544-51, as **restitution/payment** of part of the shortage of ₱846,710.00.

As of August, 2004, Ramos had fully settled the balance of her accountability. On the other hand, Esconde still had a balance of accountability in MCTC, Aritao-Sta. Fe of ₱58,100.00 which, as of the time this case was submitted by the OCA for the Court's consideration, has remained unsettled. (Emphases supplied)

In its Resolution,[1] the Court ordered Respondent Judge Alexander Balut *(Judge Balut)* to pay a fine for his failure to decide 33 cases and 101 motions without properly requesting for an extension. The Court, however, did not rule on the administrative liability of Judge Balut with respect to the result of the financial audit for the reason that he was not given a chance to present his side on the matter.

Consequently, the Office of the Court Administrator *(OCA)*, in its Memorandum,[2] sought reconsideration of the Court's decision stating that although Judge Balut was not formally

---

[1] 561 Phil. 349 (2007).

[2] *Rollo* (Vol. II), pp. 988-991.

Supreme Court E-Library

required to comment on the findings of the audit team regarding the shortage in the court collections, he was not denied due process of law. The OCA explained that Judge Balut was able to present his side in his Letter[3] to OCA, dated December 9, 2006. The OCA, thus, asked for the re-opening of the case or in the alternative, that Judge Balut be required to comment on the findings of the financial audit.

In its Resolution,[4] dated December 16, 2008, the Court directed Judge Balut to comment on the audit report and, upon the recommendation[5] of the OCA, referred the matter to the Court of Appeals *(CA)* for investigation, report and recommendation.[6]

Thereafter, the CA, in its Report and Recommendation, recommended the dismissal of the charges against Judge Balut for failure of the OCA to clearly substantiate and prove the participation of Judge Balut in the financial transactions of the courts. On his admission that he borrowed money from the judiciary fund, the CA opined that Judge Balut could no longer be penalized as he was previously fined by the Court in its October 9, 2007 Resolution.

The Court finds itself unable to agree with the recommendation of the CA.

In administrative cases, the quantum of proof necessary is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[7] The standard of substantial evidence is justified when there is reasonable ground to believe that respondent is responsible for

---

[3] *Id*. at 619-621.

[4] *Rollo* (Vol. I), p. 1047.

[5] Memorandum, dated August 7, 2009, *id*. at 1781-1785.

[6] Resolution, dated October 20, 2009, *id*. at 1786.

[7] *Office of the Court Administrator v. Mabelin*, 447 Phil. 615, 622 (2003); *Office of the Court Administrator v. Nolasco*, 599 Phil. 622 (2009).

Supreme Court E-Library

the misconduct complained of, even if such evidence is not overwhelming or even preponderant.[8]

A review of the records shows that Judge Balut actually messed with the court collections. The **three clerks of court** of MTC Bayombong, MTC Solano and MCTC Aritao-Sta Fe categorically stated that **Judge Balut borrowed money from the court funds and executed certifications to that effect**. They separately reported that Judge Balut had been **borrowing** money from the various funds of the court collections. In fact, Lydia Ramos *(Ramos)*, the Clerk of Court of MCTC-Aritao-Sta. Fe, presented **several withdrawal slips[9] where the back portions were signed either by Judge Balut or his court interpreter, Salvador Briones**, as the recipient of the cash withdrawn from the funds of the court. These withdrawal slips likewise bore the notations of Ramos such as "Judge," "for Judge," "taken by Judge," and "given to Judge" to serve as her reminder that the money withdrawn were given to Judge Balut.

Significantly, **Judge Balut himself issued the Certification[10] stating that his cash accountability as of April 2002 with the Fiduciary Fund was ₱207,774.42 and there were certifications issued by the clerks of court attesting that he had settled his accountabilities with the court funds.**

The CA opinion that Judge Balut could no longer be penalized for his admission that he had borrowed money from the judiciary fund because the Court already fined him in its October 9, 2007 resolution is ***erroneous***. In the said resolution, the Court categorically stated that Judge Balut was fined ***for undue delay*** in deciding 33 cases submitted for decision and for failing to resolve 101 motions within the 90-day reglementary period.

---

[8] *Liguid v. Judge Camano*, 435 Phil. 695, 704 (2002).

[9] *Rollo* (Vol. I), pp. 140-154.

[10] *Certification,* dated May 9, 2002, *id*. at 163.

Supreme Court E-Library

Once again, the Court stresses that judges must adhere to the highest tenets of judicial conduct.[11] Because of the sensitivity of his position, a judge is required to exhibit, at all times, the highest degree of honesty and integrity and to observe exacting standards of morality, decency and competence.[12] He should adhere to the highest standards of public accountability lest his action erode the public faith in the Judiciary.[13]

Judge Balut fell short of this standard for borrowing money from the collections of the court. He knowingly and deliberately made the clerks of court violate the circulars on the proper administration of court funds.[14] He miserably failed to become a role model of his staff and other court personnel in the observance of the standards of morality and decency, both in his official and personal conduct.

The act of misappropriating court funds constitutes dishonesty and grave misconduct, punishable by dismissal from the service even on the first offense.[15] For said reason, the respondent deserves a penalty no lighter than dismissal. This Court has never tolerated and will never condone any conduct which violates the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system.[16]

The Court has considered the recommendation of imposing the penalty of suspension. That, however, would be **unfair** to Clerk of Court Judith En. Salimpade, Municipal Trial Courts of Bayombong and Solano; and Clerk of Court Eduardo Esconde of the Municipal Circuit Trial Court, Arita-Sta. Fe, who were both dismissed from the service for the same offense. Clerk

---

[11] *Liguid v. Camano, Jr.*, *supra* note 8, at 709.

[12] *Mercado v. Salcedo,* A.M. No. RTJ-03-1781, October 16, 2009, 604 SCRA 4, 19-20.

[13] *Taran v. Judge Jacinto*, 448 Phil. 563, 572 (2003).

[14] *Re: Report on the Judicial & Financial Audit Conducted in MTCs, Bayombong & Solano & MCTC, Aritao-Sta. Fe, Nueva Vizcaya*, 561 Phil. 349, 364 (2007).

[15] *Office of the Court Administrator v. Nolasco*, 599 Phil. 622 (2009).

[16] *Office of the Court Administrator v. Bernardino*, 490 Phil. 500, 532 (2005).

Supreme Court E-Library

of Court Lydia Ramos was fined but only because she had already retired from the service. *And it would send a wrong message to the public that the Court has different standards – one for the magistrates and another for the rank-and-file.*

The fact that Judge Balut fully paid his cash liabilities will not shield him from the consequences of his wrongdoings. His unwarranted interference in the Court collections deserves administrative sanction and not even the full payment of his accountabilities will exempt him from liability. "**It matters not that these personal borrowings were paid as what counts is the fact that these funds were used outside of official business**."[17]

Similarly, his nearly 22 years in the service would not serve to mitigate his liability. His offense was not a single or isolated act but it constituted a series of acts committed in a span of several years. In other words, he was **a repeated offender, perpetrating his misdeeds with impunity not once, not twice, but several times in three (3) different stations**. In the case of *In Re: Report on the Judicial and Financial Audit Conducted in the Municipal Trial Court in Cities, Koronadal City,*[18] it was written:

> For misappropriating court funds in concert with Ines, Judge Sardido has been charged with grave misconduct. Admitting that he indeed "borrowed" money from court funds, the latter recounted that on four occasions in 1994, he had borrowed ₱130,000 to be able to purchase a car and thereafter borrowed intermittently through the years, for reasons ranging from the schooling needs of his children to the illness of his parents. **That he intended to repay the amounts "borrowed" is immaterial.** These funds should never be used outside of official business. Rule 5.04 of Canon 5 of the Code of Judicial Conduct states:
>
> > "A judge or any immediate member of the family shall not accept a gift, bequest, favor or loan from anyone except as may be allowed by law."

[17] 351 Phil. 1, 23 (1998).

[18] 496 Phil. 814, 829-830 (2005).

Supreme Court E-Library

Time and time again, this Court has emphasized that "the judge is the visible representation of the law, and more importantly, of justice. It is from him that the people draw their will and awareness to obey the law. For the judge to return that regard, he must be the first to abide by the law and weave an example for others to follow."

Sadly, the foregoing facts clearly show that Judge Sardido has not only miserably failed to present himself as an example to his staff and to others, but has also shown no compunction in violating the law, as well as the rules and regulations. *His dishonesty, gross misconduct, and gross ignorance of the law tarnish the image of the judiciary and would have warranted the* ***maximum penalty of dismissal****,* were it not for the fact that he had already been dismissed from the service in another administrative case. (Emphasis and underscoring supplied)

WHEREFORE, finding Judge Alexander Balut **GUILTY** of gross misconduct, the Court hereby imposes upon him the penalty of **DISMISSAL** from the service, with forfeiture of all retirement benefits and with prejudice to re-employment in any branch of the government, including government- owned and controlled corporations, except the money value of accrued earned leave credits.

Judge Balut is hereby **ORDERED** to cease and desist immediately from rendering any order or decision, or from continuing any proceedings, in any case whatsoever, effective upon receipt of a copy of this resolution.

This disposition is **IMMEDIATELY EXECUTORY**.

The Office of the Court Administrator shall see to it that a copy of this resolution be immediately served on the respondent.

SO ORDERED.

Sereno, C.J., Carpio, Brion, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

Leonardo-de Castro, J., joins the dissent of Justice Bersamin as to the penalty.

Bersamin, J., see dissent on penalty.

Del Castillo, J., joins *J.* Bersamin in his dissent.

Supreme Court E-Library

Peralta, J., joins *J.* Bersamin's dissent (on leave, left vote.)

Leonen, J., on leave, left his vote.

Velasco, Jr. and *Perez, JJ.,* no part.

DISSENTING OPINION

BERSAMIN, *J.*:

The well-written main opinion presents well the undeniable facts of the case against respondent Judge, who has committed the grave offense of dipping his fingers into the judicial funds in the custody of court employees working under him. It dismisses respondent Judge from the service for gross misconduct.

Under ordinary circumstances, I would have no objection to imposing the supreme penalty of dismissal from the service. Respondent Judge should not have sullied himself by showing personal interest in the judicial funds because he should have been well aware of their nature as fiduciary funds. He should not be condoned for what he had done.

However, I respectfully urge that the Court takes note of certain circumstances that I humbly suggest should be considered and treated as mitigating circumstances to temper the supreme penalty of dismissal from the service to a lesser penalty.

The **first** is that respondent Judge had apparently no intention to misappropriate or steal the funds. He willingly signed for the "borrowings," thereby evincing the lack of the intention to appropriate the funds for himself. He also issued certifications of his "borrowings." The implication of his doing so is that he intended all along to repay the "borrowings."

The **second** is that respondent Judge already returned the funds he had "borrowed."

In the case of the Municipal Trial Court (MTC) in Bayombong, Nueva Vizcaya, Judith En. Salimpade, Clerk of Court II, was found by the audit team to have incurred as of August 31, 2003

Supreme Court E-Library

a total shortage of ₱2,057,378.59. In the case of the audit of the Municipal Circuit Trial Court (MCTC) of Aritao-Sta. Fe, the accountability of Lydia Ramos, Clerk of Court of the MCTC of Aritao-Sta. Fe, was declared as fully settled as of August 2004; while the accountability of Eduardo S. Esconde, whom Ramos had succeeded in that position on July 16, 2000 without proper turnover of accountabilities, was found to be short of ₱58,100.00 as of the time that the matter was submitted by the Office of the Court Administrator to the Court for its consideration. **Although said accountable officers in both stations had revealed to the auditors that respondent Judge had borrowed money from their collections, and that they had accommodated him only out of fear of him, there is no question that: (1) he did return the ₱240,000.00 borrowed to Salimpade, who issued a certification to the effect that he had thereby "completely settled his monetary accountability to the MTC, Bayombong;" and (2) he returned the amount of ₱207,774.42 as of May 9, 2002 to the Clerk of Court of the MCTC.**

The restitution of the "borrowed" funds can be taken as a mitigating factor in favor of respondent Judge. The Court has held so in *Perez v. People*,[1] a criminal case for malversation:

> It bears stressing that the full restitution of the amount malversed will not in any way exonerate an accused, as payment is not one of the elements of extinction of criminal liability. Under the law, the refund of the sum misappropriated, even before the commencement of the criminal prosecution, does not exempt the guilty person from liability for the crime. **At most, then, payment of the amount malversed will only serve as a mitigating circumstance akin to voluntary surrender, as provided for in paragraph 7 of Article 13 in relation to paragraph 10 of the same Article of the Revised Penal Code.** (Bold emphasis added)

The **third** is that respondent Judge has been in the service for nearly 22 years now. From his position as an MCTC Judge in Nueva Vizcaya in 1993, he was promoted on September 1,

[1] G.R. No. 164763, February 12, 2008, 544 SCRA 532, 566-567.

Supreme Court E-Library

2005 to the Regional Trial Court in Quezon City. The promotion surely indicated that he had passed the Judicial and Bar Council's standard of scrutiny, earned the President's stamp of approval, and eventually assumed the higher office.

The safekeeping of collected funds is essential to the goal of an orderly administration of justice, and no protestation of good faith can override the mandatory nature of circulars designed to promote full accountability for government funds. But while this Court has sternly disciplined, and deservedly so, personnel in its ranks, warning that the act of misappropriating judiciary funds constitutes dishonesty and grave misconduct punishable by dismissal from service even on the first offense, it has time and again extended nevertheless its benevolence to reduce the imposable penalty. The benevolence occasionally exhibited by the Court finds legal basis in the postulate that the disciplining authority has the discretion to consider mitigating circumstances in the imposition of the proper penalty. As expounded in *Arganosa-Maniego v. Salinas*:[2]

> Pursuant to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, Grave Misconduct and Dishonesty, being in the nature of grave offenses, carry the extreme penalty of dismissal from the service with [accessory penalties] ….
>
> However, in several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. **Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.** (emphasis and words in bracket added.)

Thusly, in *Arganosa-Maniego v. Salinas*, respondent Rogelio Salinas, albeit found liable for gross misconduct and dishonesty for encashing two checks in the name of complainant judge amounting to ₱22,521.00 by forging the latter's signature, was only **suspended for one year without pay,** taking into account

---

[2] A.M. No. P-07-2400, June 23, 2009, 590 SCRA 531, 544-545.

Supreme Court E-Library

that the offense was his first in his more than 10 years of government service, and that he acknowledged and exhibited remorse for his infractions and restituted the amount involved.[3] As the Court observed there, where a penalty less severe would suffice, whatever missteps had been committed by the employee ought not to be visited with a consequence as severe as dismissal.[4]

In the matter of the *Report on the Financial Audit on the Books of Accounts of Mr. Delfin T. Polido, Former Clerk of Court of Municipal Circuit Trial Court, Victoria-La Paz, Tarlac,*[5] respondent judge was **fined** ₱10,000.00 for a shortage of ₱38,000.00 in the judiciary fund. Respondent judge later restituted the shortage.

IN VIEW OF THE FOREGOING CIRCUMSTANCES, I respectfully submit that dismissal from the service is a penalty too severe for respondent Judge. Instead, I **VOTE** that he should suffer **suspension from office without pay for two years**.

EN BANC

[G.R. No. 194192. June 16, 2015]

DAVAO CITY WATER DISTRICT REPRESENTED BY ITS GENERAL MANAGER, RODORA N. GAMBOA, *petitioner, vs.* **RODRIGO L. ARANJUEZ, GREGORIO S. CAGULA, CELESTINO A. BONDOC, DANILO L. BUHAY, PEDRO E. ALCALA, JOSEPH A. VALDEZ, TITO V. SABANGAN, MARCELINO**

---

[3] *Id*. at 547.

[4] *Id*.

[5] A.M. No. 05-11-320-MCTC, February 17, 2006, 482 SCRA 571, 577.