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UPDATES ON PLEA BARGAINING IN DRUG CASES



• What is Plea Bargaining?

The Supreme Court defined plea bargaining in criminal cases as “a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.” (*Daan vs. Sandiganbayan, G.R. Nos. 163972-77; March 28, 2008*)

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- **Plea Bargaining in layman's terms**

1. It is the disposition of criminal charges by agreement between the prosecution and the accused.
2. The accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval.
3. It usually involves the accused pleading guilty to a lesser offense or to only one or some of the counts of a multi-count charges in return for a lighter sentence than that for the graver charge.
4. It is encouraged because it leads to prompt and final disposition of most criminal cases at the same time resulting to the conviction of the accused.

- **When is plea bargaining made?**

Ordinarily, plea bargaining is made during the pre-trial stage of the proceedings.

- **Is plea bargaining authorized under our existing Rules?**

Yes. Plea bargaining is authorized under Section 2, Rule 116 of the Rules of Court.

- **Is plea bargaining allowed in drug cases?**

Yes, in the landmark case of *Salvador Estipona vs. Judge Lobrigo (En Banc)*, G.R. No. 226679, August 15, 2017, the Supreme Court declared Sec. 23 of RA 9165 prohibiting plea bargaining in drug cases to be unconstitutional.

- **Why is it that under Revised Guidelines for Continuous Trial of Criminal Cases, plea bargaining in drug cases is not allowed?**

The reason is that Sec. 23 of RA 9165 has yet to be declared unconstitutional that time because Revised Guidelines for Continuous Trial of Criminal Cases was issued on April 25, 2017 or almost four (4) months before the decision in *Estipona* case was rendered.

- **After the *Estipona* case, what guidelines were issued on plea bargaining in drug cases?**

1. The Office of the Court Administrator (OCA) issued **OCA Circular 90-18**, adopting the Supreme Court *En Banc* Resolution dated April 10, 2018 or Adoption of the **Plea Bargaining Framework in Drug Cases**.

It sets the limits to be observed in plea bargaining in drug cases including the specific violations subject of plea bargaining.

2. The Department of Justice also issued **DOJ Circular No. 27** on June 26, 2018 or the **Amended Guidelines on Plea Bargaining for RA 9165**, to serve as an internal guideline for the prosecutors to observe before they give their consent to proposed plea bargains.

It offers stiffer penalties on plea bargains than that of OCA Circular 90-18.



- **Is DOJ Circular No. 27 unconstitutional for being inconsistent with OCA Circular 90-18?**

No. The Supreme Court in another recent landmark case of *Nurullaje Sayre @ "Inol" vs. Judge Xenos; (En Banc) G.R. Nos. 244413, 244415-16; February 18, 2020* ruled that DOJ Circular No. 27 is not inconsistent with OCA Circular 90-18. It merely serves as an internal guideline for the prosecutors to observe before they give their consent to the proposed plea bargains.

Since plea bargaining is a mutual agreement between parties, DOJ Circular No. 27 also serves as the counter-proposal of the prosecutor to the offer of plea of guilty to a lesser offense by the accused.

- **In plea bargaining, can the accused demand other parties to accept the plea to a lower offense?**

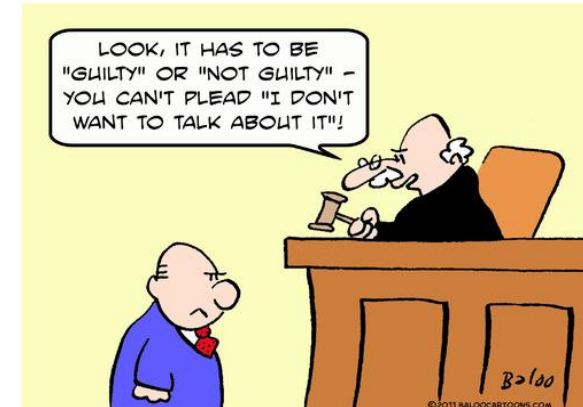
No. A plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court.

The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.

- **Who are the parties in plea bargaining?**

Generally, the parties to a plea bargaining are:

1. The accused,
2. The private offended party; and
3. The prosecutor.



- **What is the role of the PNP in plea bargaining?**

The Revised Guidelines for Continuous Trial of Criminal Cases as stated in DIDM Investigative Directive No. 2018-20 states that the arresting officer in "victimless crimes" shall be present during plea bargaining to give his/her consent, with the conformity of the public prosecutor.

- **What is DIDM Investigative Directive 2018-20 and what is its purpose?**

It is the “Plea Bargaining of Victimless Crimes in Relation to Revised Guidelines for Continuous Trial of Criminal Cases”.

It was issued after the Court in *Estipona* case declared Sec. 23 of RA 9165 as unconstitutional. The purpose of this Investigative Directive is to set policy and guidelines that shall be observed by PNP personnel in the plea bargaining of criminal cases involving victimless crimes.

- **What does “victimless crime” mean?**

“Victimless crimes” are crimes which do not have any private offended party.

- **In short, the consent of the arresting officer is only needed if there is no private offended party?**

Yes.

- **Who is an “arresting officer”?**

On the part of the PNP, as stated in the Investigative Directive 2018-20, the arresting officer is the PNP personnel who executed and signed the Affidavit of Arrest.

- **Before giving his/her consent in plea bargaining, what is the most important thing that the arresting officer needs to do?**

The arresting officer must first secure a written clearance from his/her superior before giving his/her consent in plea bargaining. Without the said written clearance the arresting officer cannot validly give his consent in the plea bargaining.

- **Who are the superiors authorized to give clearance to the arresting officer?**

The following are the superiors authorized to give clearance:

1. Concerned Chief of Police/Station Commander; or
2. Provincial Officer/Chief for National Operational Support Units (NOSUs); or
3. SITG/SITF Commander if the case is handled by SITG/SITF.

*For further questions and assistance,
Please contact the assigned Legal Officers in your respective units*