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PANYERONG PULIS @ UR SERBIS 24/7



**Kailangan mo ba ng payo ukol sa pagpapatupad ng batas?
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- Tamang pagpapatupad ng batas
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- **LANDLINE:**
Tumawag sa 470-1297
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GLOBE: 09178562801
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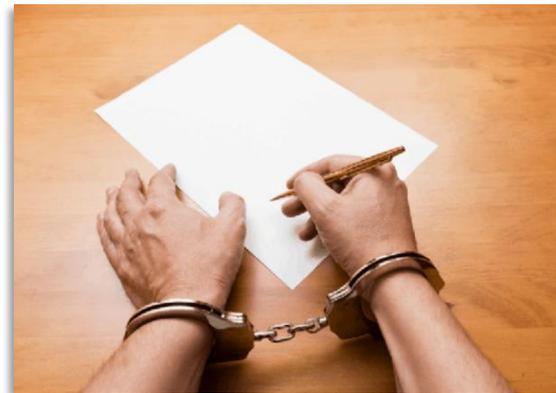


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Plea Bargaining



As a general rule, plea bargaining is available as a legal remedy for any person facing criminal indictment before our courts. While there is no simple and ultimate definition of plea bargaining, Black's

Law Dictionary defines it as follows: "[t]he process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval."

The process 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, GR No 163972-77, March 28, 2008)**

It is encouraged because it leads to prompt and final disposition of most criminal cases. It shortens the time between charge and disposition and enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned.

In this issue of the PNP Legal Service Advisory, we will discuss the basic information any police officer must have to fully grasp the intricate subject of plea bargaining.

WHAT IS THE LEGAL BASIS FOR PLEA BARGAINING?



Plea bargaining is authorized under Section 2, Rule 116 of the Revised Rules of Criminal Procedure. The stated rule provides that:

“Section 2. *Plea of guilty to a lesser offense.* — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but

before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of

not guilty. No amendment of the complaint or information is necessary.” (sec. 4, circ. 38-98)

The above-quoted rule is a restoration of the old rule which limits a plea of guilty to a lesser offense only when it is necessarily included in the offense charged in the complaint or information.

WHEN IS PLEA BARGAINING DONE?

As early as the pre-trial stage of the criminal prosecution, plea bargaining is already taken into consideration. In fact, it is one of the subjects or purpose for the conduct of pre-trial conference.

In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) plea bargaining;
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;

- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such other matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case. (secs. 2 and 3, cir. 38-98) **(Section 1, Rule 118, Rules of Court)**

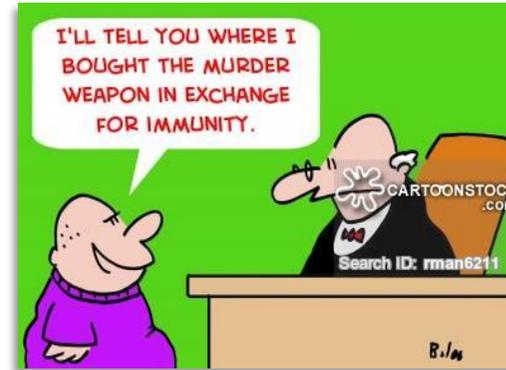
But it may also be made during the trial proper and even after the prosecution has finished and rested its case. Thus, the court held that it is immaterial that plea bargaining was not made during the pre-trial stage or that it was made only after the prosecution already presented several witnesses.

WHAT ARE THE BASIC REQUIREMENTS OF PLEA BARGAINING?

The following are the requirements set forth by the Rules upon which plea bargaining may be made:

- a. It should be with the consent of the offended party and the prosecutor;
- b. The plea of guilt should be to a lesser offense; and
- c. The lesser offense must necessarily be included in the offense charged. **(Section 2, Rule 116)**

WHAT IS THE NATURE OF AN OFFER TO PLEAD GUILTY TO A LESSER OFFENSE?



the trial court. **(People v Villarama, GR No 99287, June 23, 1992)**

The Court ruled that 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 that is best addressed entirely to the sound discretion of

In the same case, the Supreme Court elaborated that “xxx In such situation, jurisprudence has provided the trial court and the Office of the Prosecutor with a yardstick within which their discretion may be properly exercised. Thus, in *People v Kayanan* (L-39355, May 31, 1978, 83 SCRA 437, 450), We held that the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged. In his concurring opinion in *People v Parohinog* (GR No L-47462, February 28, 1980, 96 SCRA 373, 377), then Justice Antonio Barredo explained clearly and tersely the rationale or the law:

xxx After the prosecution had already rested, the only basis on which the fiscal (now prosecutor) and the court could rightfully act in allowing the appellant to change his former plea of not guilty to murder to guilty to the lesser crime of homicide could be nothing more nothing less than the evidence already in the record. The reason for this being that Section 4 of Rule 118 (now Section 2, Rule 116) under which a plea for a lesser offense is allowed was not and could not have been intended as a procedure for compromise, much less bargaining.”

Be it noted that the rules, in the second sentence of Section 2, Rule 116, used the word “may” signalling the exercise of discretion upon trial court on whether to allow the accused to make a plea.

WHAT HAPPENS WHEN A PLEA BARGAINING IS ARRIVED AT?

The trial court shall:



1. Issue an order which contains the plea bargaining arrived at;
2. Proceed to receive evidence on

the civil aspect of the case; and

3. Render and promulgate judgment of conviction, including the civil liability or damages duly established by the evidence.

WHEN IS PLEA BARGAINING NOT ALLOWED?

When RA No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2003 was enacted, it was provided in Section 23 thereof that “any person charged under any provision of this Act (RA 9165) regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.”

IS THIS LAW STILL PREVAILING?

NO. On August 15, 2017, the Supreme Court held in the case of Estipona Jr vs Judge Lobrigo that **Section 23 of RA No. 9165 is unconstitutional** for being contrary to the rule-making authority of the Supreme Court under the Constitution.

With that decision, all violations of RA No 9165 now comes within the ambit of Section 2, Rule 116, unless, the offense has no lesser offense to begin with.

frequently a question of great difficulty. It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system." **(Estipona v Lobrigo, GR No 226679 August 15, 2017)**

HOW IS THE PNP AFFECTED BY THIS DEVELOPMENT?

By virtue of the Revised Guidelines for Continuous Trial of Criminal Cases, plea bargaining for victimless crimes shall only proceed if the arresting officer is present to give consent with the conformity of the public prosecutor.

For purposes of the Investigative Directive issued by the PNP, consent of PNP arresting officers pertaining to plea bargaining may only be given in victimless crimes. These crimes are those offenses where there are no private offended party. **(DIDM Investigative Directive No 2018-20)**

WHAT IS THE EFFECT OF GIVING CONSENT TO PLEA BARGAINING?

The giving of consent to the plea bargaining shall not be considered as bungling of a case. If a case was subjected to plea bargaining, the same is not considered dismissal, but instead, conviction to a lesser offense only. **(DIDM Investigative Directive No 2018-20)**

WHAT IS THE PROCEDURE TO OBSERVE IN THE GIVING OF CONSENT?

Before attending Arraignment of a criminal case involving victimless crimes, the arresting officer must seek guidance and clearance from the concerned Chief of Police (COP)/Station Commander or Provincial Officer/Chief for National Operational Support Units (NOSUs) whether consent will be given if the accused desires to enter into a plea of guilty to a lesser offense. If the case is handled by a Special Task Group/Force (STG/F), the arresting officer must seek guidance and clearance from the head of the said STG/F.

In all cases, the arresting officer cannot give consent without the written clearance from those mentioned above. Otherwise, they shall be dealt with in accordance with the provisions of NAPOLCOM Memorandum Circular No 2016-002 and other applicable and pertinent laws and regulations. **(DIDM Investigative Directive No 2018-20)**

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