

Republic of the Philippines
Supreme Court
Manila

Mis-DCBatt
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

AUG 28 2019

THIRD DIVISION

MARILYN MEIM M. VDA. DE
ATIENZA,

Complainant,

- versus -

PALERMO I. AGUILAR, SHERIFF
IV, OFFICE OF THE CLERK OF
COURT, REGIONAL TRIAL
COURT, SAN JOSE,
OCCIDENTAL MINDORO,
Respondent.

A.M. No. P-19-3988

[Formerly OCA I.P.I. No. 17-4692-P]

Present:

PERALTA, J., Chairperson,
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

Promulgated:

August 14, 2019

Mis-DCBatt

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DECISION

PERALTA, J.:

Before us is an administrative complaint¹ filed by Marilyn Meim M. Vda. de Atienza (*complainant*) against Palermo I. Aguilar (*Aguilar*), Sheriff IV, Office of the Clerk of Court, Regional Trial Court (RTC), San Jose, Occidental Mindoro, for misconduct and gross negligence relative to the implementation of a writ of execution issued in relation to Criminal Case No. 12655, entitled "*People v. Eleazar Candido y Janairo*."

The facts are as follows:

Complainant is one of the private complainants in a criminal case against accused Eleazar J. Candido for reckless imprudence resulting in serious physical injuries and damage to property under Article 365 of the Revised Penal Code. On April 29, 2015, Hon. Cornelio A. Sy, Presiding Judge of the Municipal Trial Court (MTC), San Jose, Occidental Mindoro,

¹ Rollo, pp. 2-6.

rendered judgment convicting the accused and awarded damages to the private complainants, the dispositive portion of which reads:

WHEREFORE, finding the evidence more than sufficient for this conviction, the court hereby pronounces the accused ELEAZAR CANDIDO y JANAIRO, GUILTY BEYOND REASONABLE DOUBT for the crime of Reckless Imprudence Resulting in Serious Physical Injuries and Damage to Property defined and penalized under Art. 365 and sentences him to a penalty of FOUR (4) MONTHS AND ONE (1) DAY TO FOUR (4) YEARS, TWO (2) MONTHS.

As far as damages is concerned, the court finds the respondent and so hold him liable to pay the following:

- 1) Actual damages amounting to P240,000.00 consisting [of] the medical and other related expenses covered by receipts;
- 2) Moral damages in amount of P25,000.00 for the outrage and wounded feelings and trauma they suffered from the reckless driving of the drunk driver;
- 3) Exemplary damages in the amount of P25,000.00;
- 4) Cost of suit.

SO ORDERED.²

Subsequently, a Writ of Execution³ was issued by Clerk of Court Socorro G. Gorospe, MTC, San Jose, Occidental Mindoro, directing Aguilar to cause the execution of the judgment of the court dated April 29, 2015, which was final and executory as regards with the awarded damages. On September 1, 2015, Clerk of Court Gorospe gave Aguilar the amount of Four Thousand Five Hundred Fifty Pesos (₱4,550.00) to cover for his expenses in the implementation of the writ.⁴

Thereafter, complainant made several follow-ups to Aguilar as to the status of the writ of execution and pleaded for his help because she needed the proceeds of the award of damages for her medical expenses. Complainant lamented that Aguilar and accused's respective houses are both located in Barangay Pag-asa, San Jose, Occidental Mindoro, yet Aguilar's usual answer to her follow-ups was, "*hindi ko matiyempo-tiyempuhan si Eleazar eh.*"

On September 29, 2015, complainant went to the MTC and the OCC-RTC, San Jose, Occidental Mindoro, to inquire anew on the status of the

² *Id.* at 8.

³ *Id.* at 8-9.

⁴ *Id.* at 11.



writ's implementation, however, she was informed that Aguilar has not submitted any report on the matter.

On April 5, 2017, the Office of the Court Administrator (OCA) directed Aguilar to file his comment on the complaint against him.⁵ In his Manifestation/Motion⁶ dated June 9, 2017, Aguilar manifested that he be given more time to file his comment, or until June 30, 2017, to file his comment as he was suffering from an illness and erratic high blood pressure. On July 25, 2017, the OCA granted Aguilar's motion to extend time until June 30, 2017 to file his comment.⁷ On October 6, 2017, due to Aguilar's non-compliance to submit the required comment, the OCA issued a 1st Tracer⁸ and reiterated its earlier directive to require Aguilar to submit his comment on the complaint against him.

Thus, on June 13, 2018, as recommended by the OCA, the Court resolved to direct Aguilar to show cause why he should not be administratively dealt with, for his failure to submit the required comment despite two directives to do so, and to submit the said comment.⁹

In his Comment¹⁰ dated August 30, 2018, Aguilar explained that he was unable to file his comment on time because he suffered from a life-threatening condition which required him to rest and recuperate. He submitted a medical certificate¹¹ dated December 12, 2017 where it was stated therein that Aguilar was diagnosed to have COPD D (*Severe Obstruction Ventilatory Defect*) and was declared as unfit to continue his current profession. Another medical certificate¹² issued on the same date also certified that Aguilar was diagnosed to have *Dilated Cardiomyopathy*, Hypertension, and Diabetes Type 2, and was advised to resume work with limitations that extreme physical and psychological stress must be avoided. Aguilar's medical records, issued by The Medical City, also showed that due to his medical condition, he was advised to rest for three (3) months.

As to the non-implementation of the subject writ of execution, Aguilar claimed that he actually served the writ to accused on September 14, 2015, as evidenced by the signature of accused on the copy¹³ of the subject writ of execution. However, Aguilar explained that the implementation of the writ was never fully satisfied due to several circumstances, to wit: (1) accused did not have a permanent address, and sometimes accused would stay with

⁵ *Id.* at 13.

⁶ *Id.* at 14.

⁷ *Id.* at 15.

⁸ *Id.* at 17.

⁹ *Id.* at 23.

¹⁰ *Id.* at 27-35.

¹¹ *Id.* at 36.

¹² *Id.*

¹³ *Id.* at 45.

his parents and the latter would hide him so he was unable to meet accused anymore; (2) upon receipt of the writ, accused merely shrugged off and claimed that he has no money to pay for the damages; and (3) while it may be true that accused' family has a real property in a remote island to which the judgment could be attached, the property could not be presumed to be owned by the accused.¹⁴ Aguilar maintained that he had exerted all diligent efforts to locate the accused as well as his properties but failed to find them, thus, he could not be considered as remiss in his duties as sheriff.¹⁵

With regard to the periodic reporting, Aguilar admitted that he failed to make a periodic report as to the status of the execution of the subject writ. He claimed that he had so many duties and responsibilities being a sheriff of two courts that he has no free time to make periodic reports on the writs he executed. While admitting that he failed to submit the report, Aguilar alleged that the same was not deliberately done but rather it just slipped off his mind as he was already old and sickly. Aguilar acknowledged that volume of work is not an excuse from non-compliance with the mandate of the law, nevertheless, considering his circumstances, he prays for the indulgence of the Court.¹⁶

In a Resolution¹⁷ dated January 16, 2019, the Court resolved to refer the instant administrative matter to the OCA for evaluation, report and recommendation.

In a Memorandum¹⁸ dated April 22, 2019, the OCA found Aguilar guilty of Simple Neglect of Duty for his failure to (a) immediately implement the Writ of Execution dated April 29, 2015 relative to Criminal Case No. 12666; (b) submit the required periodic reports with respect to the implementation of the writ; and (c) for his delay in complying with the directives of the OCA to submit a comment on the complaint against him. It, thus, recommended that the instant complaint be re-docketed as a regular administrative complaint and that Aguilar be suspended for one (1) month and one (1) day, with stern warning that the commission of the same or any similar act will be dealt with more severely.

We agree with the findings and recommendation of the OCA.

Section 9, Rule 39 of the Rules of Court provides for the manner by which execution of judgments for money should be enforced by a sheriff, to wit:

¹⁴ *Id.* at 29.

¹⁵ *Id.* at 30.

¹⁶ *Id.* at 30-32.

¹⁷ *Id.* at 114.

¹⁸ *Id.* at 122-125.



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(a) *Immediate payment on demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

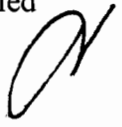
The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) *Satisfaction by levy.* — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed, of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.



(c) *Garnishment of debts and credits.* — The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishee requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due, otherwise, the choice shall be made by the judgment obligee.

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee.

Section 14 of Rule 39, on the other hand, requires sheriffs, after implementation of the writ, to make a return thereon:

SEC. 14. *Return of writ of execution.* - The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. ***If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires.*** The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.¹⁹

In the instant case, the subject writ of execution was issued on April 29, 2015, yet records show that there was no attempt at all from Aguilar to enforce the writ by demanding the immediate payment of the full amount of damages stated in the subject writ. He claimed that he served the copy of the writ on September 14, 2015 as evidenced by the accused' signature on the copy of the writ of execution, but service of the writ of execution upon the

accused is not equivalent to enforcing the writ. After serving of the writ, Aguilar made no effort anymore to enforce the writ as he claimed that accused does not have a permanent address so it was difficult to meet him.

Other than Aguilar's failure to enforce the subject writ, he also failed to timely submit his report and explain the reason why the writ was not enforced. He tried to excuse himself by claiming that his medical condition prevented him from doing his duties. However, Aguilar's applications for leave of absence showing that he was actually on leave due to illness was only from September 1, 2017 to December 14, 2017; thus, from the service of the writ on September 14, 2015, there was a period of at least two (2) years, *i.e.*, from September 14, 2015 to September 1, 2017 where Aguilar could have acted on the writ and submitted his report but failed to do so. There was, likewise, no explanation as to what measures were taken during this interval as to why the writ was not enforced. Upon service of the writ to accused on September 14, 2015, Aguilar should have submitted a report to the court on the reason why the judgment had not been satisfied in full. This report must have been made every thirty (30) days thereafter until the judgment was satisfied in full or until its effectivity expired. Further, from the time Aguilar reported back to work on December 18, 2017 until the filing of his comment on August 30, 2018, Aguilar has still neither enforced the writ nor submitted the required sheriff's report.

It must be emphasized anew that the above-quoted provisions leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriff's compliance with the Rules is not merely directory but mandatory.²⁰ It is well settled that a sheriff's functions are purely ministerial, not discretionary.²¹ Once a writ is placed in his hand, it becomes his duty to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court.²² Additionally, even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ. Periodic reporting also provides the court insights on the efficiency of court processes after promulgation of judgment. Over all, the purpose of periodic reporting is to ensure the speedy execution of decisions.²³

Thus, from the foregoing, it is then apparent that Aguilar violated the provisions of the Rules of Court prescribing the duties of sheriffs in the implementation of court writs and processes. He failed to observe the

²⁰ *Atty. Gonzales, et al. v. Galo*, 685 Phil. 352, 360 (2012).

²¹ *Erdenberger v. Aquino*, 671 Phil. 551, 556 (2011).

²² *Dy Teban Trading Co., Inc. v. Verga*, 661 Phil. 24, 30-31 (2011), citing *Dacdac v. Ramos*, 576 Phil. 32, 36 (2008).

²³ *Roxas v. Sicat*, A.M. No. P-17-3639 (Formerly OCA I.P.I. No. 14-4314-P), January 23, 2018.

procedure in order to ensure the proper administration of justice, and rules which he is presumed to know by heart. The long intervals of time from the service of the writ on the accused cannot be said to be a full and prompt discharge of his responsibility for the speedy and efficient execution of the court's judgment. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party. It is said that execution is the fruit and the end of the suit and is very aptly called the life of the law.²⁴ It is also indisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with this delicate task must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders, or other processes of the courts of justice would be futile.²⁵

Sheriffs, being agents of the court, play an important role, particularly in the matter of implementing the writ of execution. Indeed, [sheriffs] "are tasked to execute final judgments of courts. If not enforced, such decisions are empty victories of the prevailing parties. They must, therefore, comply with their **mandated ministerial duty to implement writs promptly and expeditiously**. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice."²⁶

For Aguilar's lapses in the procedures in the implementation of the writ of execution, as well as his delay in complying with the directives of the OCA to submit his comment, we find him guilty of simple neglect of duty. Simple neglect of duty is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.²⁷ It is a less grave offense punishable by **suspension from office for one (1) month and one (1) day to six (6) months for the first offense**, and dismissal for the second offense under Section 46(D) of the Revised Rules on Administrative Cases in the Civil Service. However, the Court, in several cases,²⁸ imposed the penalty of fine in *lieu* of suspension as an alternative penalty in order to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension. Therefore, the Court imposes on Aguilar the penalty of fine in the amount equivalent to

²⁴ *Zarate v. Judge Untalan*, 494 Phil. 208, 218 (2005).

²⁵ *Id.*; *1st Endorsement dated June 3, 1991 of Atty. Danilo Cunanan*, 308 Phil. 447, 453 (1994), citing *Pascual v. Duncan*, 290-A Phil. 591, 594 (1992).

²⁶ *Olympia-Geronilla, et al. v. Montemayor, et al.*, 810 Phil. 1, 11 (2017), citing *Lucas v. Dizon*, 747 Phil. 88, 96 (2014). (Emphasis supplied)

²⁷ *Id.* at 15, citing *Miranda v. Raymundo, Jr.*, 749 Phil. 9, 15 (2014).

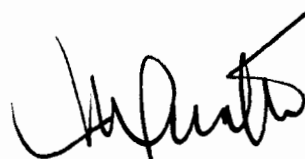
²⁸ *Mendoza v. Esguerra*, 703 Phil. 435 (2013); *Zamudio v. Auro*, 593 Phil. 575, 584 (2008); *Olympia-Geronilla, et al. v. Montemayor, et al.*, 810 Phil. 1 (2017).

his salary for one (1) month, with a stern warning that a repetition of the same or any similar act shall be dealt with more severely.

WHEREFORE, respondent Palermo I. Aguilar, Sheriff IV of the Office of the Clerk of Court, Regional Trial Court, San Jose, Occidental Mindoro, is found **GUILTY** of simple neglect of duty. In lieu of suspension, he is **FINED** in the amount equivalent to his salary for one (1) month, and **STERNLY WARNED** that a repetition of the same or any similar act shall be dealt with more severely.


Let a copy of this Decision be attached to the personal records of respondent Aguilar in the Office of the Administrative Services, Office of the Court Administrator.

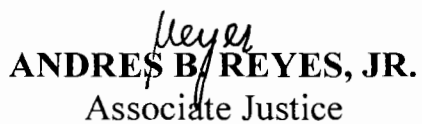
SO ORDERED.

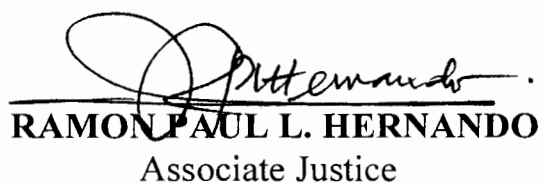


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

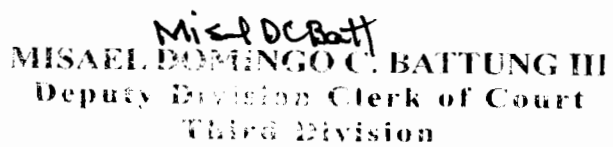

MARVIC MARIO VICTOR F. LEONEN
Associate Justice


ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

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