

THIRD DIVISION

G.R. Nos. 225204-05 — F/DIR. ROGELIO F. ASIGNADO (Ret.), F/DIR. JOSE E. COLLADO (Ret.), and CINSIP ERNESTO S. PAGDANGANAN, petitioners, versus OFFICE OF THE OMBUDSMAN, represented by CONCHITA CARPIO MORALES, and F/CSUPT. CARLITO S. ROMERO (Ret.), respondents.

Promulgated:

March 29, 2023

X-----MisPDCBatt-----X

CONCURRING OPINION

CAGUIOA, J.:

Before the Court is a Petition for *Certiorari* (Petition), challenging the Joint Resolution dated June 20, 2014 and Joint Order dated December 21, 2015 of the Office of the Ombudsman (OMB), dismissing the complaint against respondent F/CSupt. Carlito S. Romero (Romero) for violation of Section 3(e) and Section 3(f) of Republic Act (R.A.) No. 3019, and for Grave Coercion punishable under Article 286 of the Revised Penal Code.

The complaint against Romero stemmed from his act of temporarily holding in abeyance the remittance of the salary deductions from the Bureau of Fire Protection (BFP) personnel to the BFP-Mutual Aid and Beneficiary Association, Inc. (BFP-MBAI). The *ponencia* dismisses the petition for lack of merit and upholds the OMB's finding that there is no probable cause to hold Romero criminally liable for the offenses stated in the complaint.¹

I concur.

Probable cause exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof. It is determined on the reasonable likelihood that the elements of the crime charged are present.² As the *ponencia* aptly holds, Romero's conduct — in temporarily halting the remittance of the employee dues — is not tantamount to a crime. I respectfully submit this Concurring Opinion to expound on my reasons for agreeing with the dismissal of the Petition, as well as to emphasize the Court's authority to make a definitive determination of lack of probable cause.

¹ *Ponencia*, pp. 15-19.

² *Non v. Office of the Ombudsman*, G.R. No. 239168, September 15, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67097>>.

I.

The OMB's exoneration of Romero from the administrative charges against him has attained finality

Before ruling on the merits of the Petition, the *ponencia* discusses the remedies from the decisions of the OMB concerning administrative disciplinary cases and criminal cases. The *ponencia* holds that the administrative charges against Romero (*i.e.*, Case No. OMB-P-A-13-0310) had already attained finality. It further rules that the Court's review is limited to the criminal aspect of the OMB's assailed Joint Resolution.³

While this is correct, the difference between resorting to Rule 43 and Rule 65 of the Rules of Court in administrative disciplinary cases is worth emphasizing. As well, it is significant to highlight the distinction between the remedies for an administrative and criminal case, as resorting to the improper recourse ultimately affects the finality of the decision sought to be reversed or nullified.

I expound.

In *Yatco v. Office of the Deputy Ombudsman for Luzon*⁴ (*Yatco*), the Court clarified the procedural recourse for the criminal and administrative aspects of cases decided by the OMB, to wit:

With respect to administrative charges, there is a delineation between appealable and unappealable Ombudsman rulings. Pursuant to Section 27 of the Ombudsman Act, any order, directive or decision of the Ombudsman "imposing the penalty of public censure or reprimand, [or] suspension of not more than one (1) month's salary shall be final and unappealable." Case law has explained that Ombudsman rulings which exonerate the respondent from administrative liability are, by implication, also considered final and unappealable. In these instances, the Court has ruled that even though such rulings are **final and unappealable**, it is still subject to judicial review on the ground of grave abuse of discretion, and the correct procedure is to file a **petition for certiorari under Rule 65 of the Rules of Court before the CA.**

In contrast, in cases where the respondent is not exonerated and the penalty imposed is not merely public censure or reprimand, or suspension of not more than one (1) month's salary, the Ombudsman's decision is appealable, and the proper remedy is to file an **appeal under Rule 43 of the Rules of Court before the Court of Appeals.** x x x

x x x x

³ *Ponencia*, pp. 12-14.

⁴ G.R. No. 244775, July 6, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66358>>.



Meanwhile, with respect to **criminal charges**, the Court has settled that the remedy of an aggrieved party from a **resolution of the Ombudsman finding the presence or absence of probable cause** is to file a **petition for certiorari under Rule 65 of the Rules of Court** and the petition should be filed not before the CA, but before the **Supreme Court**.⁵ (Emphasis in the original)

Verily, as to the administrative aspect of the case, the aggrieved party does not have the option of freely resorting to either Rule 43 or Rule 65 of the Rules of Court, in order to challenge the OMB's findings. When the OMB's ruling is final and unappealable — as when the respondent is exonerated, publicly censured or reprimanded, or suspended for not more than one month's salary — the only available recourse is a special civil action for *certiorari* under Rule 65 filed with the Court of Appeals (CA).

Furthermore, these remedies apply even when the OMB renders a consolidated ruling on both the administrative and criminal aspect of the case. The *ponencia* thus aptly quoted the Court's ruling in *Yatco*, to wit:

As consolidation is a matter for the court to determine post-filing, it does not affect the nature of the procedural recourse taken by the aggrieved party. Here, when the Ombudsman consolidated the criminal and administrative charges against respondents, it deemed it proper to resolve both criminal and administrative aspects in one Joint Resolution because the charges involved common questions of fact or law. Ordinarily, administrative and criminal charges filed before the Ombudsman would usually pertain to one incident involving the same set of facts and parties, from which both criminal and administrative liabilities may stem. This gives rise to their consolidation. **However, after the Ombudsman renders its consolidated ruling, the aggrieved party is then required to take the appropriate procedural remedies to separately assail the administrative and criminal components of the same.** Clearly, a Rule 65 *certiorari* petition (which is the proper remedy to assail the criminal aspect of the Ombudsman ruling; or the administrative aspect of an unappealable Ombudsman ruling) is clearly different from a Rule 43 appeal (which is the proper remedy to assail the administrative aspect of an appealable ruling). As held in *Madrigal Transport, Inc. v. Lapanday Holdings*, the special civil action for *certiorari* and appeal are two different remedies that are mutually exclusive. They are different from one another with respect to purpose, manner of filing, subject matter, period of filing, and the need for a prior motion for reconsideration.⁶ (Emphasis and underscoring supplied)

These distinctions are material because non-conformity with the appropriate remedy precludes the aggrieved party from further assailing the corresponding aspect of the OMB's ruling. Thus, in *Joson v. Office of the Ombudsman*,⁷ the Court ruled that the dismissal of the administrative charge had attained finality because therein petitioner failed to file the appropriate remedy. In explaining the appropriate recourse available from the dismissal of the administrative aspect of the complaint, the Court clarified that “the

⁵ Id.

⁶ Id.

⁷ 784 Phil. 172 (2016).



correct procedure is to file **a petition for *certiorari* before the CA** to question the Ombudsman's decision of dismissal of the administrative charge."⁸

Here, petitioners F/Dir. Rogelio F. Asignado (Ret.), F/Dir. Jose E. Collado (Ret.), and Cinsp Ernesto S. Pagdanganan (collectively, petitioners) filed the present Petition directly **before the Court** to nullify the OMB's consolidated ruling, which dismissed the administrative and criminal charges against Romero. In their Petition, they pray, not only to set aside the dismissal of the criminal complaint, but to also find "substantial evidence on all the administrative charges against [Romero] thereby imposing upon him the penalty of dismissal from the service."⁹ Thus, following *Yatco* above, petitioners were required "to take the appropriate procedural remedies to **separately** assail the administrative and criminal components"¹⁰ of the OMB decision.

In other words, petitioners' relief of having the administrative aspect of the assailed OMB resolution reviewed was for them to have filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA — not a petition for *certiorari* with the Court. **Due to their failure to resort to the proper procedural remedy, the exoneration of Romero from the charge of grave misconduct, conduct prejudicial to the best interest of the service, oppression and grave abuse of authority, had already become final.**

Accordingly, the Court is without any jurisdiction to touch the administrative resolution of the OMB, and as such, the administrative aspect of the case was correctly dismissed.¹¹

II.

The Court's course of action in reviewing the probable cause finding of the Office of the Ombudsman

The Court adopts the policy of non-interference with the OMB's finding of probable cause, including its decision to dismiss complaints without undergoing preliminary investigation. This policy arises out of respect for the constitutionally mandated powers of the OMB, and upon considerations of practicality owing to the myriad functions of the courts.¹² This rule, however, admits of an exception. Pursuant to the Court's expanded power of judicial review, the Court may pass upon the probable cause finding of the OMB when there is an allegation of grave abuse of discretion, amounting to lack or excess of jurisdiction.¹³

⁸ Id. at 190-191. Emphasis supplied.

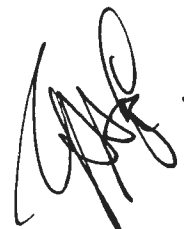
⁹ *Rollo*, p. 21. Petition.

¹⁰ *Yatco v. Office of the Deputy Ombudsman for Luzon*, supra note 4.

¹¹ *Ponencia*, pp. 13-14.

¹² *Trinidad v. Office of the Ombudsman*, 564 Phil. 382, 388 (2007).

¹³ Id.



The Court expounded on its authority to review the OMB's exercise of its prosecutorial powers in *Casing v. Ombudsman*,¹⁴ to wit:

As a general rule, the Court does not interfere with the Office of the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service." While the Ombudsman's findings as to whether probable cause exists are generally not reviewable by this Court, where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power *and* duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. **The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention.** The petitioner failed to show the existence of grave abuse of discretion in this case.¹⁵ (Emphasis supplied)

Thus, the Court is not precluded from reviewing the OMB's findings as to the exercise of its investigative power.

It bears noting that the subject of the herein Rule 65 Petition is the OMB's conclusion that there is no probable cause to hold Romero criminally liable for violation of Section 3(e) and Section 3(f) of R.A. No. 3019, and for Grave Coercion under the Revised Penal Code. Thus, the preliminary investigation was already conducted, and the OMB had already made a determination that there is no probable cause to indict Romero for the charges against him. In view of petitioners' allegation that such findings were attenuated with grave abuse of discretion, the Court may, as it did, review whether the preliminary investigation was conducted by the OMB in a capricious and patently arbitrary manner, tantamount to a "virtual refusal to perform a duty under the law."¹⁶

Should the Court find that there was no grave abuse of discretion on the part of the OMB, the appropriate disposition is to dismiss the Petition, as in this case. This is in line with the ultimate purpose of a preliminary investigation — "to secure the innocent against hasty, malicious and oppressive prosecution, and to protect them from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial."¹⁷

¹⁴ 687 Phil. 468 (2012).

¹⁵ Id. at 475-476.

¹⁶ *Republic v. Ombudsman*, G.R. No. 198366, June 26, 2019, 906 SCRA 32, 52.

¹⁷ *Non v. Office of the Ombudsman*, supra note 2.



On the other hand, if the OMB is found to have gravely abused its discretion in dismissing the criminal charges, then the proper course of action for the Court is to grant the Petition, set aside the corresponding findings of the OMB, and already direct the filing of the necessary information before the proper court. This is the course of action outlined in *Tupaz v. Office of the Deputy Ombudsman for the Visayas*:¹⁸

When, however, “there is an unmistakable showing of grave abuse of discretion on the part of the prosecutor” in declining to prosecute specific persons for specific offenses, a writ of *certiorari* may be issued to set aside the prosecutor’s initial determination.

In *Chua v. Padillo*, this Court sustained the Court of Appeals in granting the respondents’ Petition for *Certiorari* and in ordering the inclusion of the petitioners-siblings Wilson and Renita Chua as accused, along with Wilson’s wife, Marissa Padillo-Chua, in a case of estafa through falsification of commercial documents.

In *Marasigan v. Fuentes*, this Court reversed the Court of Appeals’ dismissal of the private complainant’s Petition for *Certiorari*. It found that it was “grave abuse of discretion for [Department of Justice] Secretary [Agnès VST] Devanadera to conclude that respondent [Robert] Calilan may only be prosecuted for the crime of less serious physical injuries while his co-respondents, [Reginald] Fuentes and [Alain Delon] Lindo, may not be prosecuted at all.” Accordingly, this Court reinstated the previous Resolution issued by Undersecretary Linda Malenab-Hornilla, which “ordered the provincial prosecutor of Laguna to file informations for attempted murder against Fuentes, Calilan, and Lindo.”

Reynes v. Office of the Ombudsman (Visayas) concerned prosecution for illegal exactions as penalized under Article 213 (2) of the Revised Penal Code. This Court found grave abuse of discretion on the part of a graft investigation and prosecution officer who, in evaluating proof that the private respondents collected sums which had precisely been alleged by the complainant to lack legal basis, faulted the same complainant for failing to present an ordinance as proof that the amounts received were “different x x x than those authorized by law.” This Court set aside the Resolution and Order of the Office of the Ombudsman (Visayas) and directed the filing of an information against one (1) of the private respondents.¹⁹

To reiterate, the OMB here has concluded that there is no probable cause to hold Romero liable. Such finding was arrived at after the OMB’s investigation, which includes the respective submissions of the parties’ position papers. The Court thus correctly ruled on the issue of whether there is grave abuse of discretion on the part of the OMB — as opposed to remanding the same back to the OMB for the conduct of a new preliminary investigation — in order to squarely dispose of the case.

¹⁸ G.R. No. 212491-92, March 6, 2019, 895 SCRA 294; See also *Non v. Office of the Ombudsman*, supra note 2.

¹⁹ *Tupaz v. Office of the Deputy Ombudsman for the Visayas*, id. at 307-308.



III.

The OMB did not gravely abuse its discretion in dismissing the criminal charges against Romero

On the merits, I concur with the *ponencia* that there is no compelling reason to deviate from the policy of non-interference with the OMB's findings.

To recall, the present case stemmed from petitioners' complaint against Romero, who was then the BFP Chief Superintendent and Officer-in-Charge during the time material to the complaint. According to petitioners, Romero should be charged with violating Section 3(e) and Section 3(f) of R.A. No. 3019, and for Grave Coercion under the Revised Penal Code, when he directed the BFP Directorate for Comptrollership to hold in abeyance the remittance of the salary deductions to the BFP-MBAI.²⁰ Romero, on the other hand, argued that there was no wrongdoing on his part, as the directive was brought about by concerns regarding the legitimacy of the election of the BFP-MBAI Board of Trustees, there being two groups claiming to have been validly elected to the Board. He insisted that his act was only intended to prudently manage and protect the rights and interests of the BFP-MBAI and its members during the subsistence of the controversy.²¹

The OMB made a categorical finding that there was no ill will or malice on the part of Romero.²² The *ponencia* states that Romero does not have any right of disposal over the remittances due the BFP-MBAI, more so when these were eventually reverted to the Bureau of Treasury.²³ This notwithstanding, the *ponencia* correctly holds that there is no evidence of manifest partiality, evident bad faith, or gross inexcusable negligence on the part of Romero in temporarily withholding the remittance of the BFP-MBAI contributions. Neither is there any showing that Romero accorded any unwarranted benefit, advantage, or preference to any party, even himself. Verily, the OMB is correct that there is no probable cause to hold him liable for violating Section 3(e) of R.A. No. 3019.²⁴

The *ponencia* further concludes that there is no probable cause to charge Romero with violating Section 3(f) of R.A. No. 3019, and for Grave Coercion. The bare unsubstantiated allegations of petitioners fail to establish that Romero compelled, intimidated, or threatened petitioners by denying the remittance of the employee contributions.²⁵

²⁰ *Ponencia*, p. 4-5.

²¹ *Id.* at 6.

²² *Rollo*, pp. 37-38.

²³ *Ponencia*, p. 16.

²⁴ *Id.* at 16-19.

²⁵ *Id.* at 19.



I agree.

Probable cause is the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he or she was prosecuted. As a preliminary finding, it is not based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. That being said, probable cause demands more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic.²⁶

In order to justify prosecution, the elements of the crime charged should, in all reasonable likelihood, be present.²⁷ Thus, for violation of Section 3(e) of R.A. No. 3019,²⁸ there should be a showing that the act caused undue injury to any party, or gave any private party unwarranted benefits, advantages, or preferences, in the discharge of the public officer's functions. It must likewise be established that these were committed through manifest partiality, evident bad faith, or through gross inexcusable negligence.

Here, it does not appear that the BFP-MBAI or its members suffered any injury as a result of the temporary stoppage in the remittance of the salary contributions to the BFP-MBAI. Petitioners did not even allege or provide any specific details as to how the non-remittance of salary contributions inflicted any damage, how it hampered the functions of the association, or how it adversely affected the members. To the contrary, Romero was able to establish that he exhausted all measures to protect the interests of all stakeholders involved. For instance, since the BFP-MBAI provides its members with insurance benefits, Romero, together with several incumbent members of the BFP-MBAI, met with the representatives from Fortune Life Insurance Company, in order to ensure the uninterrupted processing of insurance claims of the BFP-MBAI members during the pendency of the controversy.²⁹

Aside from failing to establish any undue injury or unwarranted benefits, the records also show that Romero's actions were not tainted with any partiality, bad faith, or gross inexcusable negligence. On behalf of the BFP, and in his capacity as its Officer-in-Charge, he also filed an interpleader case against the two groups claiming to be the legitimate trustees of the BFP-

²⁶ *Vergara v. Ombudsman*, 600 Phil. 26, 44 (2009).

²⁷ *Non v. Office of the Ombudsman*, supra note 2.

²⁸ The elements of Section 3(e) of R.A. No. 3019 are as follows: (1) The accused must be a public officer discharging administrative, judicial or official functions; (2) He or she must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; (3) That his or her action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. (See *Camp John Hay Development Corp. v. Office of the Ombudsman*, G.R. No. 225565, January 13, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67724>>.)

²⁹ *Rollo*, p. 75, BFP Minutes of the Meeting Held on March 14, 2013.



MBAI in order to ascertain which set was entitled to receive the payroll deductions of its members. In his complaint, he even prayed to “[order] the deposit of the outstanding remittances of the monthly dues collected so far from its members x x x and [consider] the release thereof to whomever of defendants is entitled to the same.”³⁰

In the same manner, as regards the charge of Section 3(f) of R.A. No. 3019,³¹ it cannot likewise be said that Romero neglected or refused to act within a reasonable time on any matter pending before him. Even assuming that there was such neglect or refusal, it cannot be said that there was insufficient justification, **as he endeavored to only ensure that the funds for the BFP-MBAI are managed and disbursed by the persons duly-elected as trustees.**

Finally, with respect to the charge of Grave Coercion,³² there is no evidence that Romero prevented petitioners from performing their functions as supposed trustees of the BFP-MBAI. It was not also established that Romero prevented petitioners from assuming their claimed positions as members of the Board of Trustees, or that he prevented them from doing so through violence, threats, or intimidation.

To be sure, the amounts that were withheld did not even redound to Romero’s own personal benefit, but were reverted to the Bureau of Treasury.³³ This material fact belies any imputation of ill will or bad faith on the part of Romero in stopping the remittance of salary contributions. While it may be true that subsequent legislation is necessary in order for these funds to become available for expenditure, this is only an inconvenience that does not, however, rise to a level of a criminal element. Hence, to my mind, this is insufficient to establish probable cause for the criminal charges against Romero. Again, only a clear showing of grave abuse of discretion should warrant interference with the evaluation of the evidence presented before the OMB.

³⁰ Id. at 80, Complaint-in-Interpleader dated March 21, 2013.

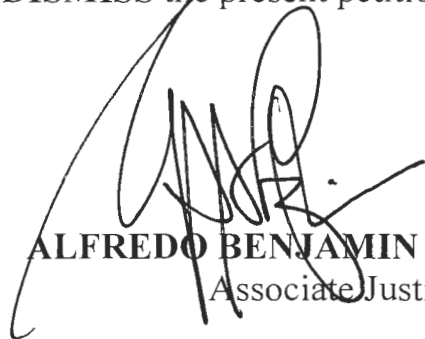
³¹ The elements for Section 3(f) of R.A. No. 3019 are as follows: (1) The offender is a public officer; (2) The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him; (3) Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and (4) Such failure to so act is for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another. (See *Camp John Hay Development Corp. v. Office of the Ombudsman*, supra note 28)

³² The elements of Grave Coercion under Article 286 of the Revised Penal Code are as follows: (1) that a person is prevented by another from doing something not prohibited by law, or compelled to do something against his will, be it right or wrong; (2) that the prevention or compulsion is effected by violence, threats or intimidation; and (3) that the person who restrains the will and liberty of another has no right to do so, or in other words, that the restraint is not made under authority of law or in the exercise of any lawful right. (See *Sy v. Hon. Secretary of Justice*, 540 Phil. 111, 117 (2006))

³³ *Rollo*, p. 83, BFP Office of the Chief Accountant Certification dated July 16, 2013.



All things considered, I **CONCUR** that petitioners failed to establish that the OMB gravely abused its discretion in dismissing the criminal charges against Romero. Thus, I vote to **DISMISS** the present petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice