



Republic of the Philippines
Supreme Court
Baguio City

EN BANC

CIVIL SERVICE COMMISSION,
Petitioner,

G.R. No. 194368

Present:

- versus -

ARLIC ALMOJUELA,
Respondent.

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,* and
LEONEN, JJ.

Promulgated:

April 2, 2013

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DECISION

BRION, J.:

We resolve the Civil Service Commission's (CSC) appeal by *certiorari* seeking the reversal of the Court of Appeals' (CA) amended decision¹ in CA-G.R. SP No. 106258. The assailed decision partly granted the respondent SJO2 Arlic Almojuela's (*SJO2 Almojuela*) Motion for

* On official leave.

¹ Court of Appeals Amended Decision, penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justices Magdangal M. De Leon and Isaias P. Dicedican; *rollo*, pp. 7-15.

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Reconsideration from the CA's original decision,² affirming its finding that SJO2 Almojuela is guilty of gross misconduct.

Factual Antecedents

The present administrative case, filed against Desk Officer/ Supervisor SJO2 Almojuela, sprang from the escape of a detention prisoner in the Makati City Jail.

Tony Lao's escape

At six'o clock in the morning of December 13, 2003, Ding Cang Hui a.k.a. Tony Lao / Tony Ling (*Lao*), a Chinese inmate charged with violation of Republic Act No. 6425 (the Dangerous Drugs Act) was discovered to have escaped from his cell at the Makati City Jail. The following officers of the Bureau of Jail Management and Penology (*BJMP*) – National Capital Region Office (*NCRO*) were on third shift custodial duty when Lao escaped: J/C INSP Pepe Quinones (*J/C INSP Quinones*); SJO2 Arvie Aquino JMP (*SJO2 Aquino*), officer of the day; SJO2 Arlic Almojuela JMP (*SJO2 Almojuela*), desk officer / supervisor; SJO1 Jose Rodney Lagahit JMP (*SJO1 Lagahit*), desk reliever; JO1 Eric Manuel Palileo (*JO1 Palileo*), duty nurse; JO1 Rommel Robles JMP (*JO1 Robles*), gater; JO1 Manuel Loyola, Jr. (*JO1 Loyola*), gater; JO1 Reynaldo Pascual JMP (*JO1 Pascual*), cell guard and JO1 Jaime Ibarra (*JO1 Ibarra*), roving guard.³

Based on testimonies cited in Civil Service Resolution No. 080701⁴ and the Court of Appeals' decision, the facts outlined below led to Lao's escape.

At about 11:00 p.m., SJO2 Aquino made a headcount of the inmates in the Makati City Jail, ensured every cell was padlocked, and instructed SJO2 Almojuela (the desk officer on duty) to dispatch the personnel to their respective areas of responsibilities.⁵

Thirty minutes later, inmate Florencio Jacinto (*Jacinto*) saw Cabidoy, an inmate charged with opening and closing the cell gates, open Cell Number 8. Lao came out and Jacinto never saw him return to his cell.⁶

² Court of Appeals Original Decision, penned by Associate Justice Arcangelita M. Romilla-Lontok, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mario V. Lopez; id. at 52-71.

³ Id. at 53.

⁴ Id. at 53-59.

⁵ Id. at 53.

⁶ Id. at 58.

Soon after Jacinto saw Lao walk out of Cell Number 8, JO1 Loyola (the gater at the Main Gate) saw Lao at the front desk talking to SJO2 Almojuela and JO1 Pascual. According to JO1 Loyola, SJO2 Almojuela ordered him and JO1 Pascual to buy food outside the jail premises.⁷ SJO1 Robles, another gater at the main gate, saw the two leave the compound at around 11:45PM. SJO1 Robles then saw Lao, Cabidoy and another inmate conversing at the Desk Area. SJO1 Robles were about to approach the three inmates to caution them, but upon seeing SJO1 Lagahit at the desk area, he went back to his post. JO1 Pascual and JO1 Loyola returned to the compound at around 12:30 a.m.; upon arrival, JO1 Loyola asked JO1 Robles “*nandyan na si Warden (Chief Inspector Quinones)?*”, to which the latter replied “*tulog na si sir.*” JO1 Robles observed that JO1 Pascual was hiding something bulky in his uniform.⁸

In his defense, SJO2 Almojuela asserted that JO1 Loyola and JO1 Pascual went out of the jail compound without his permission. He also testified seeing JO1 Pascual and Lao together at around 12 midnight, while Lao was using JO1 Pascual’s celfone.⁹ Lao’s use of JO1 Pascual’s celfone was corroborated by SJO1 Robles’s testimony, who also said that JO1 Loyola’s phone kept on ringing or alerting for text messages. It was not clear from SJO1 Robles’s testimony if JO1 Loyola was with JO1 Pascual and Lao at that time.

Roughly twenty minutes after Lao was seen using JO1 Pascual’s celfone, JO1 Loyola ordered inmate Cabidoy to go to sleep, while JO1 Pascual took the keys to the jail cells from Cabidoy.¹⁰

At around 1:15 a.m., inmate Juan Mogado, Lao’s former cellmate, saw Lao for the last time, when the latter bought ₱20.00 worth of Marlborro cigarettes from the store he was tending.¹¹

Fifteen minutes later, at about 1:30 a.m., SJO1 Robles testified that JO1 Loyola took the gate keys for the vehicular and visitor entrance and told him “*Sige pahinga ka muna, mamaya ko na ibigay sa iyo mga 3:00.*”¹²

Between 1 to 1:30 a.m., Joan Panayaman, Almojuela’s househelp, saw JO1 Loyola and JO1 Pascual together while she was heading for the comfort room. As she approached them, Panayaman overheard JO1 Pascual talking over the cellphone saying “*Bago namin ilabas ito, magdagdag muna kayo ng isang milyon.*” JO1 Pascual then toned down his voice and entered his room, while JO1 Loyola walked towards the jail area. She went up to SJO2

⁷ Id. at 55.

⁸ Id. at 56.

⁹ Id. at 54.

¹⁰ Id. at 57.

¹¹ Id. at 57.

¹² Id. at 56.

Almojuela's room, but found it locked. While going downstairs, she saw JO1 Loyola walking towards the gate with a man; a few minutes later, JO1 Loyola returned without the man.¹³

According to SJO2 Almojuela, he went to his barracks at around 1:20 a.m. and returned at around 1:30 a.m.¹⁴ This is contradicted by SJO1 Lagahit's testimony, which asserts that SJO2 Almojuela left the front desk at around 1 a.m. and returned only at 3 a.m.¹⁵ At around the same time, inmate Jerwin Mingoy (*Mingoy*) testified that SJO2 Almojuela ordered him to get food at cell number 8 and set the table for the 3rd shift personnel.¹⁶ It must be noted, however, that SJO1 Loyola saw the members of the 3rd shift personnel take their meal some time between 12 a.m. to 1 a.m.,¹⁷ while inmate Cabidoz cooked their meal at around 11:45 a.m.¹⁸

Between 2:00 to 3:00 a.m., JO1 Loyola said he saw that the desk area was unmanned and the control gate of the detention cells open; he then gave the keys in his possession to JO1 Robles and went to the infirmary.¹⁹ JO1 Loyola did not explain his whereabouts between 1:00 to 2:00 a.m.

SJO1 Lagahit testified that he conducted a roving inspection at around 2:30 a.m., and saw JO1 Loyola going to the infirmary where JO1 Palileo was assigned. He also saw SJO1 Pascual sitting in front of the gate of Cell Number 8, where Lao was billeted.²⁰ By 2:45 a.m., JO1 Robles said he woke up to find that the keys earlier taken by JO1 Loyola were already on his belly.²¹

At around 3 a.m., inmate Mingoy saw Lao talking to JO1 Palileo at the Desk Area.²² By 3:30 a.m., SJO2 Aquino left the female brigade area; while on her way to the Desk Officer's lounge, she saw the following: (1) SJO2 Almojuela sleeping on a folding chair; (2) JO1 Palileo sleeping in the infirmary; (3) SJO1 Lagahit watching TV; 4) both control gates 1 and 2 were open; and (5) JO1 Pascual was standing inside control gate number 2.²³

By 5:30 a.m., several BJMP officers saw Chief Inspector Quinones leave the jail compound aboard his car. News broke out in the jail facility that Lao was missing at around the same time.²⁴ Lao surreptitiously left the

¹³ Id. at 58-59.

¹⁴ Id. at 54.

¹⁵ Id. at 55.

¹⁶ Id. at 57-58.

¹⁷ Id. at 55.

¹⁸ Id. at 57.

¹⁹ Id. at 55.

²⁰ Id. at 54-55.

²¹ Id. at 56.

²² Id. at 58.

²³ Id. at 53-54.

²⁴ Id. at 27.

Makati City Jail and brought along with him his possessions, including a trophy he won at a pingpong match inside the prison.²⁵

Two days after Lao's escape, Supt. Edgar C. Bolcio, who replaced Chief Inspector Quinones, conducted a search and inspection of the barracks of the jail personnel suspected to be involved in Lao's escape. This resulted in the recovery of 10 keys from SJO2 Almojuela's barracks, one of which matched the padlock of the main gate.²⁶

The National Bureau of Investigation (NBI) subsequently conducted polygraph tests on JO1 Pascual and SJO2 Almojuela. According to the NBI, JO1 Pascual and SJO2 Almojuela's responses were "indicative of deceptions occurred at relevant questions". When confronted and interrogated by the NBI, the two could not satisfactorily explain the polygraph tests' results.²⁷

The BJMP's Investigation Report

A BJMP Investigation Report conducted on the incident concluded that SJO2 Almojuela and the rest of the jail officers on third shift custodial duty all colluded to facilitate Lao's getaway.²⁸ Based on the report's recommendation, the Intelligence and Investigation Division of the BJMP filed an administrative complaint against the abovementioned BJMP/NCRO members.²⁹ In Administrative Case No. 04-11, CESO IV Director Arturo Walit, the BJMP hearing officer, rendered his decision dated December 13, 2005,³⁰ finding the following liable:

First, SJO2 Almojuela and JO1 Loyola were found guilty of Grave Misconduct and were meted the penalty of dismissal from the service.

Second, SJO2 Aquino, SJO1 Lagahit and JO1 Robles were found guilty of Less Serious Neglect of Duty and were meted the penalty of Suspension with forfeiture of salaries and allowances for six months.

Third, CINSP Quinones was found guilty of Neglect of Duty and was meted the penalty of Fine equivalent to four months salary; he had since retired from the service.

²⁵ Id. at 99.

²⁶ Id. at 58.

²⁷ Id. at 58.

²⁸ Id. at 59.

²⁹ Id. at 59.

³⁰ Id. at 60-61.

Fourth, JO1 Pascual, while not absolved of administrative liability, could no longer be penalized as the administrative proceedings began long after his separation from the service.

Fifth, JO1 Palileo and JO1 Ibarra were exonerated.

SJO2 Almojuela and JO1 Loyola moved for the reconsideration of Director Walit's decision, which the latter denied for lack of merit in a Joint Resolution dated June 21, 2006. SJO2 Almojuela then appealed his conviction before the Civil Service Commission (CSC), which affirmed Director Walit's decision in its Resolution No. 080701. The CSC subsequently denied SJO2 Almojuela's motion for reconsideration.³¹

The Appellate Court's ruling

SJO2 Almojuela's next recourse was a petition for review before the Court of Appeals. He assailed the CSC's decision for the following reasons: **First**, SJO2 Almojuela claimed to have been denied due process because he was not accorded the benefit of a full-blown trial. **Second**, SJO2 Almojuela asserted that he was denied equal protection of the laws because lesser penalties were imposed on his co-workers. **Third**, SJO2 Almojuela argued that the evidence on record was insufficient to support his dismissal from the service.³²

The CA denied SJO2 Almojuela's petition.³³ According to the CA, SJO2 Almojuela was provided the due process required in administrative proceedings when he was given the opportunity to answer the accusations against him. He was fully informed of the charges against him, and did file a counter-affidavit, motions for reconsideration, a notice of appeal, and a memorandum of appeal, where he narrated his side of the story.

Further, SJO2 Almojuela's claim that he was denied equal protection of the laws because his co-workers were sentenced to lesser penalties has no legal basis. Citing *Abakada Guro Partylist v. Purisima*,³⁴ the CA pointed out that the equality guaranteed under the equal protection clause is equality under the same conditions and among persons similarly situated; when persons are under different factual circumstance, they may be treated differently.

³¹ Id. at 61-63.

³² Id. at 63-70.

³³ Id. at 52-70.

³⁴ G.R. No. 166715, August 14, 2008, 562 SCRA 251.

In this case, the CA held that SJO2 Almojuela was handed the proper penalty, because next only to the warden, he was the highest-ranking officer in the Makati City Jail at the time Lao escaped. It was incumbent upon him to oversee the whole jail compound's security, and ensure that all jail personnel performed their respective tasks. His failure to do so deserved a greater penalty than those who were under his command.

Lastly, the CA gave no credit to SJO2 Almojuela's claim that the lack of a hearing and the BJMP's bias against him rendered his dismissal illegal. It held that the presumption of regularity in the performance of Director Alit's duty as disciplining authority should prevail over SJO2 Almojuela's bare and unsupported allegations. Further, Director Alit's decision was based on substantial evidence – testimonies of SJO2 Almojuela's colleagues on duty that night showed the following laxities in the implementation of jail rules:

- (1) SJO2 Almojuela was seen sleeping in a folding chair;
- (2) Control gates 1 and 2 were open;
- (3) SJO2 Almojuela and JO1 Pascual were seen conversing with Lao at the desk area;
- (4) SJO2 Almojuela ordered JO1 Loyola and JO1 Pascual to go out of the compound and to buy food;
- (5) Lao and the other inmates were seen loitering around the jail premises when all of them should have been inside their respective cells;
- (6) The recovered keys from SJO2 Almojuela's makeshift cubicle fit the padlock in the main gate for vehicles;
- (7) Persons other than gatekeepers JO1 Robles and JO1 Loyola had access to the keys of the respective gates assigned to them.

The Appellate Court's Amended Decision

The appellate court partially granted³⁵ SJO2 Almojuela's motion for reconsideration, and lowered his liability from grave to simple misconduct. Applying Section 54(b), Rule IV of the Uniform Rules on Administrative Cases in Civil Service,³⁶ SJO2 Almojuela was meted the penalty of three

³⁵ *Rollo*, pp. 72-80.

³⁶ Section 54. Manner of Imposition. — When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

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b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

months suspension as there was neither any attendant mitigating nor aggravating circumstance.

Citing *Civil Service Commission v. Lucas*,³⁷ the CA held on reconsideration that misconduct, to be considered grave, must involve the additional elements of corruption or willful intent to violate the law or disregard of established rules; otherwise, the misconduct is only simple.

The CA found no corrupt motive or willful intent on SJO2 Almojuela's part to violate the BJMP Rules and Regulations. No clear evidence was presented to show that SJO2 Almojuela was directly involved in the prison break, nor was it proven that he benefited from it. SJO2 Almojuela likewise did not willfully trifle with the BJMP Rules and Regulations. While Lao was allowed to leave his cell, he was accompanied by the roving guard, JO1 Pascual, at all times. Considering the presumption that JO1 Pascual was regularly performing his duty, SJO2 Almojuela had no reason to believe that Lao would escape because he was under the jail guard's watch. Further, SJO2 Almojuela was seen sleeping on duty only once; since SJO2 Aquino and SJO1 Lagahit (who were with him) were awake at that time, his lapse could not be considered to be sufficiently grave or serious to warrant his dismissal from the service.

The Present Petition

The CSC asserts in its present petition that the CA should not have had disturbed the CSC's findings, as conclusions of administrative bodies charged with their specific field of expertise are generally afforded great weight by the courts.³⁸ SJO2 Almojuela's conviction is supported by evidence on record, and sufficiently satisfied the substantial evidence standard. Taken together, the testimonies submitted during the BJMP investigation establish that SJO2 Almojuela connived with JO1 Pascual, JO1 Loyola and Lao to facilitate the latter's escape. Even assuming that SJO2 Almojuela had no knowledge of the plan, he could have easily discovered and prevented the escape had he been awake and alert.

According to the CSC, a jail guard's act of sleeping while at his post on night-shift duty constitutes grave misconduct because it is a flagrant disregard of BJMP's policy that a jail officer should stay vigilant during his shift. In SJO2 Almojuela's case, this was aggravated by his rank – next only to the warden, he was the highest-ranking jail officer on duty. As shift supervisor, it was incumbent upon him to be awake at all times to fully oversee the jail compound's security and to ensure that all the other jail officers were performing their tasks.

³⁷ 361 Phil. 486 (1999).

³⁸ *Rollo*, pp. 29-49.

Lastly, the CSC pointed out that Grave Misconduct could not be mitigated by the accused's first time offender status or by his length of service. Section 52, Rule IV of the Civil Service Commission Memorandum Circular No. 19-99³⁹ provides that the first offense constituting grave misconduct already warrants the penalty of dismissal.

In his Comment,⁴⁰ SJO2 Almojuela reiterated the line the Court of Appeals took in its amended decision, and additionally raised the following arguments: *first*, the certificate of non-forum shopping, instead of having been signed by the CSC, was signed by the assistant solicitor general, in violation of the rule on certification against forum shopping; *second*, the CSC is not the proper party to appeal the CA's decision; and *third*, SJO2 Almojuela had been deprived of due process during the BJMP investigation, as he was not given the opportunity to submit his evidence and to present his witnesses while the prosecution was allowed to adduce its evidence under a trial-type arrangement.

Issues

The parties' arguments, properly joined, present to us the following issues:

- 1) Whether the CSC's petition for review on *certiorari* should be dismissed for failure to comply with Section 4, Rule 45 of the Rules of Court;
- 2) Whether the CSC's petition for review on *certiorari* should be dismissed as the CSC is not the proper party to appeal the CA's amended decision;
- 3) Whether SJO2 Almojuela had been deprived of due process when he was not allowed to present his evidence and witnesses during the BJMP investigation;

³⁹ Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty
1st offense — Dismissal

2. Gross Neglect of Duty
1st offense — Dismissal

3. Grave Misconduct
1st offense — Dismissal

xxx [emphasis supplied]

⁴⁰ *Rollo*, pp. 151-170.

- 4) Whether SJO2 Almojuela connived with JO1 Loyola and JO1 Pascual to facilitate Lao's escape from the Makati City Jail; and
- 5) Whether SJO2 Almojuela's actions constitute gross misconduct.

The Court's Ruling

We first rule on the procedural issues SJO2 Almojuela posed.

The CSC's petition failed to comply with Section 4, Rule 45 of the Rules of Court

As SJO2 Almojuela correctly pointed out, the CSC's petition failed to comply with Section 4, Rule 45 of the Rules of Court,⁴¹ when its certificate against forum shopping was signed by Associate Solicitor General Sharon E. Millan-Decano; it was not signed by the CSC nor by the BJMP's authorized representatives.

The consequences of this mistep are prejudicial to the party filing the pleading. Section 5, Rule 45 of the Rules of Court provides that a petition for review that does not comply with the required certification against forum shopping is a ground for its dismissal.⁴² This certification must be executed by the petitioner, not by counsel. It is the petitioner, and not always the counsel whose professional services have been retained only for a particular case, who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case. Hence, a certification against forum shopping by counsel is a defective certification. It is equivalent to

⁴¹ Section 4. Contents of Petition - The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) *contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.* [emphasis supplied]

⁴² Sec. 5. Dismissal or denial of petition. - The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

non-compliance with the requirement under Section 4, Rule 45 and constitutes a valid cause for dismissal of the petition.⁴³

In *Pascual v. Beltran*,⁴⁴ we affirmed the CA's dismissal of the petition for *certiorari* before the appellate court because it was the Solicitor General, not the petitioner, who signed the certification against forum shopping.

However, there have been instances when the demands of substantial justice convinced us to apply the Rules liberally by way of compliance with the certification against forum shopping requirement;⁴⁵ the rule on certification against forum shopping, while obligatory, is not jurisdictional. Justifiable circumstances may intervene and be recognized, leading the Court to relax the application of this rule.⁴⁶

In *People of the Philippines v. de Grano et. al.*,⁴⁷ for instance, we permitted the private prosecutor to sign the certification in behalf of his client who went into hiding after being taken out of the witness protection program. This is the case that the OSG invoked in the certification against forum shopping signed by Associate Solicitor Millan-Decano who stated in her footnote that "Pursuant to *People v. de Grano* (G.R. No. 167710, June 5, 2009), the handling lawyers of the OSG may sign verification and certificate of non-forum shopping."⁴⁸

A reading of *People of the Philippines v. de Grano et. al.*, a decision from the Third Division of the Supreme Court, shows that it cannot be used to support the OSG's conclusion.

De Grano affirms a long line of Supreme Court decisions where the Court allowed the liberal application of the rules on certification against forum shopping in the interest of substantial justice. But to merit the Court's consideration, the petitioner(s) must show reasonable basis for its/their failure to personally sign the certification. They must convince the Court that the petition's outright dismissal would defeat the administration of justice. One of the cases cited in *Grano* was *City Warden of the Manila City Jail v. Estrella*, a case decided by the Second Division of this Court, which allowed the Solicitor General to sign the verification and certification of

⁴³ *Far Eastern Shipping Company v. Court of Appeals*, G.R. No. 130068, October 1, 1998, 297 SCRA 30, 53; *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, May 26, 2005, 459 SCRA 147, 157.

⁴⁴ G.R. No. 129318, October 27, 2006, 505 SCRA 545.

⁴⁵ *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 146923, April 30, 2003, 402 SCRA 449, 449, 454-455.

⁴⁶ *People of the Philippines v. de Grano et. Al.*, G.R. No. 167710, June 5, 2009, 588 SCRA 550, 563-564 citing *Ateneo de Naga University v. Manalo*, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 336-337.

⁴⁷ G.R. No. 167710, June 5, 2009, 588 SCRA 550.

⁴⁸ *Rollo*, p. 51.

non-forum shopping in a petition before the CA or with this Court. The decision held that certification by the OSG constitutes substantial compliance with the Rules, considering that the OSG is the legal representative of the Government of the Republic of the Philippines and its agencies and instrumentalities.

In *Hon. Constantino-David et. al. v. Pangandaman-Gania*,⁴⁹ an *En Banc* decision, we clarified the application of *City Warden of the Manila City Jail v. Estrella*,⁵⁰ and held that this case does not give the OSG the license to sign the certification against forum shopping in behalf of government agencies at all times. We explained that the reason we authorized the Solicitor General to sign the certification against forum shopping is because it was then acting as a 'People's Tribune,' an instance when the Solicitor takes a position adverse and contrary to the Government's because it is incumbent upon him to present to the Court what he considers would legally uphold government's best interest, although the position may run counter to a client's position; in this case, the Solicitor General appealed the trial court's order despite the City Warden's apparent acquiescence to it and in the process took a position contrary to the City Warden's.

The rule is different when the OSG acts as a government agency's counsel of record. It is necessary for the petitioning government agency or its authorized representatives to certify against forum shopping, because they, and not the OSG, are in the best position to know if another case is pending before another court. The reason for this requirement was succinctly explained in *Hon. Constantino-David et. al. v. Pangandaman-Gania*:

The fact that the OSG under the 1987 Administrative Code is the only lawyer for a government agency wanting to file a petition or complaint does not automatically vest the OSG with the authority to execute in its name the certificate of non-forum shopping for a client office. In some instances, these government agencies have legal departments which inadvertently take legal matters requiring court representation into their own hands without the OSG's intervention. Consequently, the OSG would have no personal knowledge of the history of a particular case so as to adequately execute the certificate of non-forum shopping; and even if the OSG does have the relevant information, the courts on the other hand would have no way of ascertaining the accuracy of the OSG's assertion without precise references in the record of the case. Thus, unless equitable circumstances which are manifest from the record of a case prevail, it becomes necessary for the concerned government agency or its authorized representatives to certify for non-forum shopping if only to be sure that no other similar case or incident is pending before any other court.⁵¹

⁴⁹ G.R. No. 156039, August 14, 2003, 409 SCRA 80.

⁵⁰ G.R. No. 141211, August 31, 2001, 364 SCRA 257.

⁵¹ G.R. No. 156039, August 14, 2003, 409 SCRA 80, 95.

To be sure, there may be situations when the OSG would have difficulty in securing the signatures of government officials for the verification and certificate of non-forum shopping. But these situations cannot serve as excuse for the OSG to wantonly undertake by itself the verification and certification of non-forum shopping. If the OSG is compelled by circumstances to verify and certify the pleading in behalf of a client agency, *the OSG should at least endeavor to inform the courts of its reasons for doing so, beyond simply citing cases where the Court allowed the OSG to sign the certification.* In *Hon. Constantino-David et. al. v. Pangandaman-Gania*, the Court dealt with this situation and enumerated the following requirements before the OSG can undertake a non-forum shopping certifications as counsel of record for a client agency:

(a) allege under oath the circumstances that make signatures of the concerned officials impossible to obtain within the period for filing the initiatory pleading; (b) append to the petition or complaint such authentic document to prove that the party-petitioner or complainant authorized the filing of the petition or complaint and understood and adopted the allegations set forth therein, and an affirmation that no action or claim involving the same issues has been filed or commenced in any court, tribunal or quasi-judicial agency; and, (c) undertake to inform the court promptly and reasonably of any change in the stance of the client agency.⁵²

Under these principles, the CSC's petition for review on *certiorari* before this Court is defective for failure to attach a proper certification against forum shopping. In the certificate, the associate solicitor merely stated that she has prepared and filed the petition in her capacity as the petition's handling lawyer, and citing *People v. Grano*, claimed that the OSG's handling lawyers are allowed to verify and sign the certificate of non-forum shopping. No explanation was given why the signatures of the CSC's authorized representatives could not be secured.

Despite this conclusion, we cannot turn a blind eye to the meritorious grounds that the CSC raised in its petition, and to the reality that the administration of justice could be derailed by an overly stringent application of the rules. Under the present situation and in the exercise of our discretion, we resolve to overlook the procedural defect in order to consider the case on the merits. We carefully note in doing this that our action does not substantially affect the due process rights of the respondent, nor does it involve a jurisdictional infirmity that leaves the Court with no discretion except to dismiss the case before us.⁵³ In other words, no mandatory duty on the part of the Court is involved; we are faced with a situation that calls for the exercise of our authority to act with discretion. In the exercise of this discretion, we have deemed it more prudent, as a matter of judicial policy in

⁵² G.R. No. 156039, August 14, 2003409 SCRA 80, 96.

⁵³ Rule 56B, Section 5 of the Rules of Court provide:

Section 5. Grounds for dismissal of appeal -- The appeal *may* be dismissed *motu proprio* or on motion of the respondent on the following grounds: xxx underlining ours.

the present situation, to encourage the hearing of the appeal on the merits rather than to apply the rules of procedure in a very rigid, technical sense that impedes the cause of justice.⁵⁴

Our approach is a reminder that the rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application tending to frustrate, rather than promote substantial justice, must always be avoided.⁵⁵ The emerging trend in the rulings of this Court is to afford every party litigant with a facially meritorious case the amplest opportunity for the proper determination of his or her cause, free from the constraints of technicalities.⁵⁶ It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties the review of a meritorious case on appeal rather than dispose of the case on technicalities and cause a grave injustice; the latter course of action may give the impression of speedy disposal of cases, but can only result in more delay and even miscarriage of justice.⁵⁷

Our liberal application of the Rules of Court in this case does not however mean that the OSG can cite this Decision as authority to verify and sign the certification for non-forum shopping in behalf of its client agencies. The OSG should take note of our decision in the cited *Hon. Constantino-David et. al. v. Pangandaman-Gania* for the requisites to be satisfied before it can verify and sign the certificate of non-forum shopping for its client agencies. Rather than an authority in its favor, this Decision should serve as a case showing that the OSG had been warned about its observed laxity in following the rules on the certification for non-forum shopping. Only the substantive merits of the CSC's case saved the day in this case for the OSG.

The CSC is the proper party to raise an appeal against the CA's amended petition

SJO2 Almojuela asserts that the CSC has no legal personality to challenge the CA's amended decision because it must maintain its impartiality as a judge and disciplining authority in controversies involving public officers. He implores the Court to reconsider its ruling in *Civil Service Commission v. Dacoycoy*,⁵⁸ citing the arguments from Justice Romero's dissenting opinion.

⁵⁴ *Peñoso v. Dona*, G.R. No. 154018, April 3, 2007, 520 SCRA 232, 239-240 citing *Aguam v. Court of Appeals*, 388 Phil. 587, 593-594 (2000).

⁵⁵ *Peñoso v. Dona*, G.R. No. 154018, April 3, 2007, 520 SCRA 232, 240 citing *Ginete v. Court of Appeals*, 357 Phil. 36, 51-53 (1998).

⁵⁶ *Supra* note 55.

⁵⁷ *Supra* note 54, at 239.

⁵⁸ G.R. No. 135805, April 29, 1999, 306 SCRA 425.

More than ten years have passed since the Court first recognized in *Dacoycoy* the CSC's standing to appeal the CA's decisions reversing or modifying its resolutions seriously prejudicial to the civil service system. Since then, the ruling in *Dacoycoy* has been subjected to clarifications and qualifications,⁵⁹ but the doctrine has remained the same:⁶⁰ the CSC has standing as a real party in interest and can appeal the CA's decisions modifying or reversing the CSC's rulings, when the CA action would have an adverse impact on the integrity of the civil service. As the government's central personnel agency, the CSC is tasked to establish a career service and promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service;⁶¹ it has a stake in ensuring that the proper disciplinary action is imposed on an erring public employee, and this stake would be adversely affected by a ruling absolving or lightening the CSC-imposed penalty. Further, a decision that declares a public employee not guilty of the charge against him would have no other appellant than the CSC. To be sure, it would not be appealed by the public employee who has been absolved of the charge against him; neither would the complainant appeal the decision, as he acted merely as a witness for the government.⁶² We thus find no reason to disturb the settled *Dacoycoy* doctrine.

In the present case, the CSC appeals the CA's amended decision, which modified the liability the former meted against SJO2 Almojuela from grave misconduct to simple misconduct, and lowered the corresponding penalty from dismissal to three months suspension. Applying the *Dacoycoy* principles, the CSC has legal personality to appeal the CA's amended decision as the CA significantly lowered SJO2 Almojuela's disciplinary sanction and thereby prevented the CSC from imposing the penalty it deemed appropriate to impose on SJO2 Almojuela. The findings and conclusions below fully justify our liberal stance.

***SJO2 Almojuela was afforded due process
in the BJMP investigations***

In his Comment, SJO2 Almojuela argued that he had been deprived of due process during the BJMP investigation because he was not allowed to present his evidence and his witnesses, and was not accorded the trial-type

⁵⁹ See *Mathay, Jr. v. Court of Appeals*, G.R. Nos. 124374, 126354, and 126366, December 15, 1999, 320 SCRA 703; *National Appellate Board of the National Police Commission v. Mamauag*, G.R. No. 149999, August 12, 2005, 466 SCRA 624; *Pleyto v. Philippine National Police-Criminal Investigation and Detection Group*, G.R. No. 169982, November 23, 2007, 538 SCRA 534.

⁶⁰ *National Appellate Board of the National Police Commission v. Mamauag*, G.R. No. 149999, August 12, 2005, 466 SCRA 624, 640 citing *Dagadag v. Tongnawa*, G.R. No. 161166-67, February 3, 2005, 450 SCRA 437; *Civil Service Commission v. Gentallan*, G.R. No. 152833, May 9, 2005, 458 SCRA 278; *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, 442 SCRA 507; See also *Hon. Constantino-David et. al. v. Pangandaman-Gania*, G.R. No. 156039, August 14, 2003, 409 SCRA 80 and *Dep Ed v. Cuanan*, G.R. No. 169013, December 16, 2008, 574 SCRA 41.

⁶¹ Section 3, Article IX – B of the 1987 Constitution, and Section 1, Book V of the Administrative Code of 1987.

⁶² *Civil Service Commission v. Dacoycoy*, G.R. No. 135805, April 29, 1999, 306 SCRA 425, 437-438.

proceedings that the prosecution panel enjoyed. Since he elected a formal investigation, SJO2 Almojuela asserts that he should have been permitted to require the attendance of witnesses through compulsory processes.

We support the CA's conclusion that SJO2 Almojuela was accorded the right to due process during the BJMP investigation. The essence of due process in administrative proceedings (such as the BJMP investigation) is simply the opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.⁶³ Where a party has been given the opportunity to appeal or seek reconsideration of the action or ruling complained of, defects in procedural due process may be cured.⁶⁴

In SJO2 Almojuela's case, he was informed of the charges against him, and was given the opportunity to refute them in the counter-affidavit and motion for reconsideration he filed before the BJMP hearing officer, in the appeal and motion for reconsideration he filed before the CSC, in his petition for review on *certiorari*, in his memorandum on appeal, and, finally, in the motion for reconsideration he filed before the CA.

In particular, SJO2 Almojuela admitted in his comment that he narrated in his counteraffidavit the circumstances that, to his knowledge, transpired immediately before Lao's breakout.⁶⁵ The Motion for Reconsideration to the CA's original decision contained the additional piece of evidence that SJO2 Almojuela claimed would have exculpated him from liability: Captain Fermin Enriquez's testimony during his cross-examination in Criminal Case No. 3320236, filed against SJO2 Almojuela for conniving with or consenting to evasion under Article 223 of the Revised Penal Code.⁶⁶ This piece of evidence was reiterated in the comment SJO2 Almojuela filed before this Court.⁶⁷ Notably, SJO2 Almojuela repeatedly mentioned 'other witnesses and other documentary exhibits' that he would have presented to absolve him from liability,⁶⁸ but the only piece of evidence he submitted in his Motion for Reconsideration and Comment was Captain Enriquez's testimony.

These circumstances sufficiently convince us that SJO2 Almojuela had been given ample opportunity to present his side, and whatever defects might have intervened during the BJMP investigation have been cured by his

⁶³ *Ledesma v. Court of Appeals*, G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452.

⁶⁴ *Autencio v. City Administrator*, G.R. No 152752, January 19, 2005, 449 SCRA 46, 55-56.

⁶⁵ In SJO2 Almojuela's Comment filed before the Supreme Court, he averred:

30. Respondent's defense is not just a mere denial. Respondent's three (3) page Counter-Affidavit dated October 15, 2004 would readily show that he made assertions of facts and narrated the circumstances, to his knowledge, which transpired in the evening of December 12 and in the early morning of December 13, 2003. *Rollo*, p. 162.

⁶⁶ *Id.* at 200-201.

⁶⁷ *Id.* at 162-163.

⁶⁸ *Id.* at 163, 200.

subsequent filing of pleadings⁶⁹ before the CSC, the CA, and before this Court.

***SJO2 Almojuela's consent to Lao's
escape from the Makati City Jail has been
satisfactorily proven by substantial evidence***

We now proceed to the substantive issues.

We differ from the CA's conclusion in its amended decision finding no clear evidence that SJO2 Almojuela had been directly involved in Lao's escape. SJO2 Almojuela adopted this stance, and added that Criminal Case No. 3320236, which was filed against him for facilitating Lao's escape, has been dismissed. He also pointed out Captain Enriquez's (one of the investigating officers) testimony in Criminal Case No. 3320236, where Captain Enriquez admitted that JO1 Pascual was the last person seen in possession of the main gate's keys, and that the gatekeepers JO1 Loyola and JO1 Robles should have been safekeeping the keys. Lastly, SJO2 Almojuela sought to discredit the testimonies of SJO2 Aquino, JO1 Loyola, SJO1 Lagahit and JO1 Robles for being hearsay, and questioned the admissability of their affidavits as they were never offered as part of the BJMP prosecutors' documentary evidence.

According to the BJMP report, Lao most likely exited the jail compound through the main gate, considering that he was discovered to have disappeared at about the same time the warden left the jail on board his car (the BJMP report pegged the discovery of Lao's escape 30 minutes *after* the warden left, while the jail officers' affidavits estimated it to have transpired 30 minutes *before*). A search and inspection of the barracks of suspected jail personnel resulted in the recovery of ten keys from SJO2 Almojuela's barracks, one of which matched the main gate's padlock. This piece of evidence, when considered along with other pieces of evidence presented before the BJMP investigation and the CSC, is sufficient to conclude that SJO2 Almojuela knew and consented to Lao's getaway.

True, the CSC failed to present *direct evidence* proving that SJO2 Almojuela had been involved in facilitating Lao's escape. But direct evidence is not the sole means of establishing guilt beyond reasonable doubt since circumstantial evidence, if sufficient, can supplant the absence of direct evidence.⁷⁰ Under Section 4, Rule 133 of the Rules of Court:

⁶⁹ See *Medenilla v. Civil Service Commission*, G.R. No. 93868 February 19, 1991, 194 SCRA 278 and *de Leon v. Comelec*, G.R. No. L-56968, April 30, 1984, 129 SCRA 117 where the Court held that defects in procedural due process may be cured by the filing of a motion for reconsideration.

⁷⁰ *Gan v. People of the Philippines*, G.R. No. 165884, April 23, 2007, 521 SCRA 550, 571.

SEC. 4. Circumstantial evidence, when sufficient. -
Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

While this provision appears to refer only to criminal cases, we have applied its principles to administrative cases.⁷¹ To fulfill the third requisite, this Court in *RE: AC NO. 04-AM-2002 (JOSEJINA FRIA V. GEMILIANA DE LOS ANGELES)*,⁷² an *En Banc* decision, required that the circumstantial evidence presented must constitute an unbroken chain that leads one to a fair and reasonable conclusion pointing to the person accused, to the exclusion of others, as the guilty person.⁷³ The circumstantial evidence the CSC presented leads to a fair and reasonable conclusion that, at the very least, SJO2 Almojuela consented to Lao's getaway. The keys found in SJO2 Almojuela's room fit the padlock in the maingate, Lao's most possible point of egress. The fact that these keys should be in the safekeeping of JO1 Pascual and JO1 Robles does not clear SJO2 Almojuela from liability; on the contrary, it should convince us of his involvement in Lao's escape. It leads us to ask why the keys were found in SJO2 Almojuela's room, when the last person seen to possess the keys, and the personnel who were supposed to safekeep them, was not SJO2 Almojuela. SJO2 Almojuela's bare allegations that he was set up cannot stand up against the presumption of regularity in the performance of the investigating officers' duty. This presumption, when considered with the following pieces of evidence, leads us to no other conclusion than SJO2 Almojuela's implied consent to Lao's escape. **First**, SJO2 Almojuela's lax attitude regarding Lao, whom he admitted seeing *loitering around the jail's premises at night* and even *using JO1 Pascual's celfone*, both in contravention of BJMP rules and regulations. **Second**, SJO2 Almojuela lied when he stated in his affidavit that he only left the desk area at around 1:20 to 1:40 AM, when the testimonies of two other jail officers, SJO1 Lagahit and JO1 Loyola, show otherwise. **Third**, when Panayaman overheard the negotiations for Lao's release between JO1 Pascual and the person he was talking to in his celfone, Panayaman went to SJO2 Almojuela's room but found that the door was locked.

Finally, we do not agree with SJO2 Almojuela's assertion that the statements of SJO2 Aquino, JO1 Loyola, SJO1 Lagahit and JO1 Robles in their affidavits should be disregarded for being hearsay as he failed to cross-examine them. It is well-settled that a formal or trial-type of hearing is not

⁷¹ See *RE: AC NO. 04-AM-2002 (JOSEJINA FRIA V. GEMILIANA DE LOS ANGELES)*, A.M. No. CA-02-15-P, June 03, 2004, 430 SCRA 412; ans *RE: (1) LOST CHECKS ISSUED TO THE LATE RODERICK ROY P. MELLIZA, FORMER CLERK II, MCTC, ZARAGGA, ILOILO; AND (2) DROPPING FROM THE ROLLS OF MS. ESTHER T. ANDRES*, A.M. NO. 2005-26-SC, November 22, 2006.

⁷² A.M. No. CA-02-15-P, June 03, 2004, 430 SCRA 412.

⁷³ A.C. No. 04-AM-2002 (*JOSEJINA FRIA V. GEMILIANA DE LOS ANGELES*), A.M. No. CA-02-15-P, June 03, 2004, 430 SCRA 412, 420-421.

indispensable in administrative proceedings, and a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.⁷⁴ Technical rules applicable to judicial proceedings need not always apply.⁷⁵ In *Erece v. Macalingay et. al.*,⁷⁶ we affirmed the CA's ruling finding the petitioner guilty of dishonesty and conduct prejudicial to the best interest of the service despite his contention that he had been denied his right to cross-examine the witnesses against him. We held that the right to cross-examine the other party's witnesses is not an indispensable aspect of due process in administrative proceedings. Due process in these proceedings is not identical with "judicial process;" a trial in court is not always essential in administrative due process.⁷⁷ Moreover, we have consistently held that in reviewing administrative decisions, the findings of fact made must be respected as long as they are supported by substantial evidence.⁷⁸ We find no reason in this case to depart from these principles.

***In consenting to Lao's escape, SJO2
Almojuela is guilty of gross misconduct in
the performance of his duties as Senior Jail
Officer II***

We find SJO2 Almojuela guilty of gross misconduct in the performance of his duties as Senior Jail Officer II. Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."⁷⁹ Misconduct becomes grave if it "involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence."⁸⁰ In SJO2 Almojuela's case, we hold it established by substantial evidence that he consented to Lao's escape from the Makati City Jail. Thus, there was willful violation of his duty as Senior Jail Officer II to oversee the jail compound's security, rendering him liable for gross misconduct.

⁷⁴ *Autencio v. City Administrator*, G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55 citing *Rubenecia v. CSC*, G.R. No. 115942, May 31, 1995, 314 Phil. 612, 244 SCRA 640; *Padilla v. Sto. Tomas*, G.R. No. 109444, March 31, 1995, 312 Phil. 1095, 243 SCRA 155; *Esber v. Sto. Tomas*, G.R. No. 107324 August 26, 1993, 225 SCRA 664 (citing *Mutuc v. Court of Appeals*, G.R. No. 48108, September 26, 1990, 190 SCRA 43; *Var-Orient Shipping Co., Inc. v. Achacoso*, 161 SCRA 732, May 31, 1988).

⁷⁵ *Autencio v. City Administrator*, G.R. No. 152752, January 19, 2005 449 SCRA 46, 55 citing §48, Subtitle A, Title I, Book V, 1987 Administrative Code;

⁷⁶ G.R. No. 166809, April 22, 2008, 552 SCRA 320.

⁷⁷ G.R. No. 166809, April 22, 2008, 552 SCRA 320, 328.

⁷⁸ *Rosales Jr. v. Mijares*, G.R. No. 154095, November 17, 2004, 442 SCRA 532, 546 citing *Lo v. Court of Appeals*, 321 SCRA 190.

⁷⁹ *Ombudsman v. Apolonio*, G.R. No. 165132, March 07, 2012, 667 SCRA 583, 600-601 citing *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603, citing *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9, and *Castelo v. Florendo*, A.M. No. P-96-1179, October 10, 2003, 413 SCRA 219.

⁸⁰ *Ombudsman v. Apolonio*, G.R. No. 165132, March 07, 2012, 667 SCRA 583, 600-601 citing *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603, citing *Civil Service Commission v. Lucas*, 361 Phil. 486 (1999); and *Landrito v. Civil Service Commission*, G.R. Nos. 104304-05, June 22, 1993, 223 SCRA 564.

SJO2 Almojuela is guilty of gross negligence in the performance of his duties as Senior Jail Officer II

Even assuming that SJO2 Almojuela had not consented to Lao's getaway, adequate evidence shows that SJO2 Almojuela had been grossly negligent in the performance of his duties. Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.⁸¹

First, SJO2 Almojuela left the desk area from 1:30 a.m. to 3:00 a.m., with no explanation as to where he went or why he had to leave his post. His contention that he stepped out from the desk area at 1:20 a.m. and returned at 1:30 a.m. to take a snack is belied by the testimony of SJO1 Lagahit (the desk reliever) who testified that SJO2 Almojuela returned at 3 a.m.; and by the testimony of JO1 Loyola that the desk area was unmanned between 2:00 to 3:00 a.m. At 3 a.m., when he was established to be at the desk area, SJO2 Almojuela was even seen sleeping on a folding chair. The situation was thus one of compounded neglect.

As shift supervisor and one of the highest ranking jail officers on duty at the time of the prison break, SJO2 Almojuela had the responsibility to oversee the security of the jail compound and to ensure that all members of the shift were performing their tasks. SJO2 Almojuela's acts of leaving his post for two hours, without any adequate reason, and sleeping afterwards show a wanton disregard for his responsibilities as shift supervisor. SJO2 Almojuela's neglect of his duties considerably contributed to the lax prison environment that allowed Lao not only to escape, but to even bring his belongings with him. During SJO2 Almojuela's absence, JO1 Loyola saw that the control gates for the detention cells were open, and the desk area was unmanned.

Second, SJO2 Almojuela tolerated the blatant disregard of BJMP rules and regulations by the jail officers under his supervision. He admitted that he saw Lao loitering in the jail compound in the wee hours of the night, and did nothing about it. Worse, SJO2 Almojuela was even seen talking to Lao and JO1 Pascual at the desk area, and other inmates have been seen conversing at the desk area. The fact that JO1 Pascual accompanied Lao could not absolve SJO2 Almojuela from liability. According to BJMP rules and regulations, all inmates must be kept inside their cells after visiting

⁸¹ *Civil Service Commission v. Rabang*, G.R. No. 167763, March 14, 2008, 548 SCRA 541, 547 citing *Golangco v. Fung*, G. R. No. 147640, October 16, 2006 504 SCRA 321, 331.

hours. During night time, compelling reasons and / or emergency situations must exist before the inmates can be allowed to leave their cells. Thus, contrary to the conclusion in the CA's amended decision, it was highly irregular for Lao to be outside his cell, regardless of whether he is accompanied by a jail officer.

These circumstances show that SJO2 Almojuela, as the desk officer and shift supervisor, was grossly negligent in discharging his duties, which contributed in Lao's surreptitious escape from the Makati City Jail.

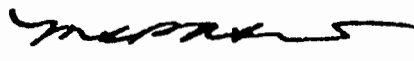
Under Section 52 (A)(2) and (3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,⁸² both gross misconduct and gross neglect of duty are grave offenses punishable by dismissal from the service for the first offense. Our conclusions fully justify the imposition of this penalty and the reinstatement of the CA's original penalty of dismissal from the service.

WHEREFORE, all premises considered, we hereby **GRANT** the petition. The amended decision of the Court of Appeals is **REVERSED** and **SET ASIDE**. Respondent Arlic Almojuela is found guilty of gross misconduct and gross neglect of duty, and is hereby **DISMISSED** from the service.

SO ORDERED.

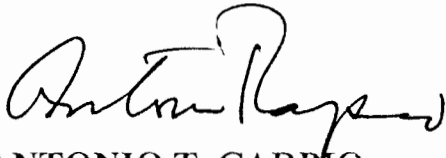

ARTURO D. BRION
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice

⁸² Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.


- A. The following are grave offenses with their corresponding penalties:
1. Dishonesty
1st offense — Dismissal
 2. *Gross Neglect of Duty*
1st offense — *Dismissal*
 3. *Grave Misconduct*
1st offense — *Dismissal* [emphasis supplied]



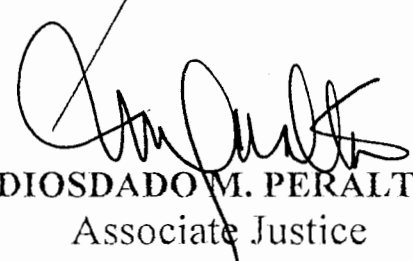
ANTONIO T. CARPIO
Associate Justice



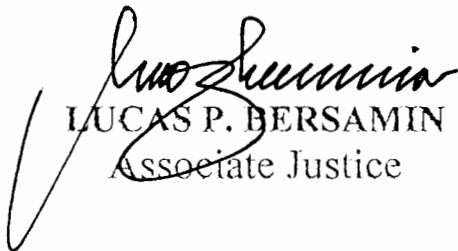
PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO DE CASTRO
Associate Justice




DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice




MARIANO C. DEL CASTILLO
Associate Justice



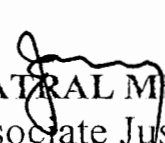
ROBERTO A. ABAD
Associate Justice



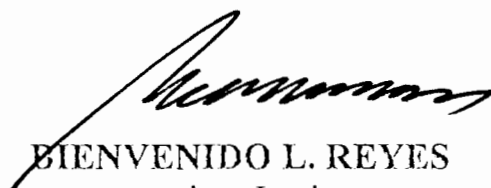
MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice

(On Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V. F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice