DE LA SALLE UNIVERSITY
TAÑADA-DIOKNO COLLEGE OF LAW
DLSU LAW CLINIC

Primer on Plea Bargaining in Drug Cases

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This primer was made possible through the combined efforts of the following Law Student Practitioners (LSPs):

AWISAN, Francis, Jr.
BLEZA, Alfonso Pio
DINO, Angelica Cecilia
HERNANDO, Hannah Francesca
SISON, Gino Alejandro
YOUNG, Jasper Brent

INTRODUCTION

This Primer is a project of the DLSU Law Clinic (DLC) under the Clinical Legal Education Program (CLEP) of the De La Salle University - Tañada-Diokno College of Law. This aims to provide all Filipinos with information and guidelines regarding Plea Bargaining in drug cases with an emphasis on clarifying the legal processes and reconciling the issues on the matter. This Primer is available in both English and Filipino.

PLEA BARGAINING

1. *Q: What is Plea Bargaining based on jurisprudence?*

A: The Supreme Court defined Plea Bargaining in criminal cases as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge."[1]

Moreover, in the case of *Santobello v. New York*, the court discussed that after plea discussions between the accused and the prosecution, the disposition of charges is an integral part of the whole process. This case has held that it allows the accused to be released at an earlier date compared to those who are denied release pending trial while it would also protect the greater public from the accused persons who are habitual delinquents to continue such criminal activities while on pretrial release.[2]

As mentioned and in relation to Section 2, Rule 116 of the Rules of Criminal Procedure, Plea Bargaining has two requisites:

a) It should be with the consent of the offended party and the prosecutor; and;

[1] Daan v. Sandiganbayan, G.R. Nos. 163972-77, March 28, 2008.
[2] Santobello v. New York, 404 U.S. 257, December 20, 1971.

b) The plea of guilt should be to a lesser offense which is necessarily included in the offense charged.[3]

2. *Q: Is there a constitutional right to Plea Bargain?*

A: In *Estipona v. Lobrigo* (2017)[4], the Supreme Court declared that, "a defendant has no constitutional right to Plea Bargain. No basic rights are infringed by trying him, rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain."

3. *Q: When is Plea Bargaining made?*

A: Based on Rule 116, Section 2 of the Rules of Court,[5] the accused may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged at arraignment.

The accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty after arraignment but before trial.[6]

In addition, Rule 118, Section 1 of the Rules of Court[7] also provides that Plea Bargaining should be considered at the pre-trial conference to be ordered by the court after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused unless a shorter period is provided for in special laws or circulars of the Supreme Court.

[3] Daan v. Sandiganbayan, G.R. Nos. 163972-77, March 28, 2008.
[4] Estipona v. Lobrigo, G.R. No. 226679, August 15, 2017.
[5] ROC, Rule 116, Sec. 2.
[6] ROC, Rule 116, Sec. 2.
[7] ROC, Rule 118, Sec. 1.

4. *Q: Who are the parties in Plea Bargaining?*

A: The parties in Plea Bargaining as provided in Rule 116, Section 2 of the Rules of Court[8] are as follows:

a) The accused;
b) The offended party; and
c) The prosecutor.

In addition, the arresting officer shall also be present during Plea Bargaining to give/her consent in victimless crimes as provided by the Directorate for Investigation and Detective Management (DIDM) Investigative Directive 2018-20. Victimless crimes include crimes that do not have any private offended party, such as in the case of drug cases.[9]

Moreover, the trial court should also be considered a party to a Plea Bargaining agreement because it is the court that has the power to accept or deny the Plea Bargaining offer agreed upon by the parties involved.

DEVELOPMENT OF PLEA BARGAINING UNDER THE RULES OF COURT[10]

1940-1964	Plea Bargaining is a rule of procedure that has been existing in this jurisdiction since July 1, 1940, under Section 4, Rule 114 (Pleas) of the 1940 Rules of Court: *SEC. 4. Plea of guilty of lesser offense. — The defendant, with the consent of the court included in the offense charged in the complaint or information.*

[8] ROC, Rule 116, Sec. 2.
[9] Legal Services, Philippine National Police, Updates on Plea Bargaining in Drug Cases, May 20, 2022, http://ls.pnp.gov.ph/updates-on-plea-bargaining-in-drug-cases/
[10] Estipona v. Lobrigo, G.R. No. 226679, August 15, 2017.

	The same provision on Plea Bargaining was retained in Rule 118 (Pleas) of the 1964 Rules of Court, which took effect on January 1, 1964.
1985	The provision on the plea of guilty to a lesser offense was amended in Section 2 Rule 116 of the 1985 Rules of Court. Furthermore, the term "Plea Bargaining" was first mentioned and expressly required during pre-trial under Section 2 Rule 118. Section 2, Rule 116 mandates: *SEC. 2. Plea of guilty to a lesser offense. — The accused with the consent of the offended party and the fiscal, may be allowed by the trial court to plead guilty to a lesser offense, regardless of whether or not it is necessarily included in the crime charged, or is cognizable by a court of lesser jurisdiction than the trial court. No amendment of the complaint or information is necessary.* Section 2, Rule 118 provides: *SEC. 2. Pre-trial conference; subjects. — The pre-trial conference shall consider the following:* *(a) Plea Bargaining;* *(b) Stipulation of facts;* *(c) Marking for identification of evidence of the parties;* *(d) Waiver of objections to admissibility of evidence; and* *(e) Such other matters as will promote a fair and expeditious trial.*
1987	A provision on double jeopardy was added to Section 2 Rule 116 in the 1987 Rules of Court: "[a] conviction

	under this plea shall be equivalent to a conviction of the offense charged for purposes of double jeopardy."
2000	Under the 2000 Rules of Court, the rules on Plea Bargaining are both provided under Section 1, Rule 116 (Arraignment and Plea) and Section 1, Rule 118 (Pre-trial)
2019	The amendment to Section 28 Rule 130 of the Rules on Evidence gave the accused flexibility to negotiate with the prosecution on the terms of the Plea Bargain without fear that if negotiations were unsuccessful, it would be used against him during the trial. *Sec. 28. Offer of compromise not admissible. - xxx A plea of guilty later withdrawn or an unaccepted offer of a plea of guilty to a lesser offense is not admissible in evidence against the accused who made the plea or offer. Neither is any statement made in the course of Plea Bargaining with the prosecution, which does not result in a plea of guilty or which results in a plea of guilty later withdrawn, admissible.*

PLEA BARGAINING IN DRUG CASES

5. *Q: What is the constitutionality of Plea Bargaining in Drug Cases based on Estipona v. Lobrigo?*

A: In *Estipona v. Lobrigo*, Salvador Estipona challenged the constitutionality of Section 23 of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165) which prohibited Plea Bargaining in drug cases. The Supreme Court categorically stated that Plea Bargaining is a rule of procedure. The rules on Plea Bargaining were introduced for the provision of a simplified and inexpensive procedure for the speedy disposition of cases in all courts. As a way of disposing of criminal charges by agreement of the parties, Plea

Bargaining is considered to be an "important," "essential," "highly desirable," and "legitimate" component of the administration of justice.[11]

Under Section 5(5) Art. VIII of the 1987 Constitution, the power to promulgate rules of pleading, practice, and procedure is vested exclusively in the Supreme Court. Section 23 of R.A. No. 9165 encroached on the exclusive rule-making authority of the Supreme Court, therefore it was declared unconstitutional.[12] Following the ruling, the Department of Justice issued Circular No. 27-18 or the Guidelines on Plea Bargaining Agreement for R.A. No. 9165 on November 21, 2017. This was subsequently amended on June 26, 2018. Under the amended guideless, Plea Bargaining in drug cases is now allowed.

6. *Q: Based on prevailing jurisprudence, did DOJ Circular No. 27-18 repeal (Amended Guidelines on Plea Bargaining for Republic Act No. 9165 Otherwise Known as the Dangerous Drugs Act, June 26, 2018), alter, or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC (Adoption of the Plea Bargaining Framework in Drugs Case, April 10, 2018)?*

A: No. The Supreme Court resolved the apparent conflict between Department of Justice (DOJ) Circular No. 27-18, which prohibits Plea Bargaining for illegal sale of dangerous drugs to the lesser offense of illegal possession of drug paraphernalia under the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165), and the Supreme Court's Resolution in A.M. No. 18-03-16-SC adopting the Plea Bargaining Framework in Drugs Cases.

DOJ Circular No. 27-18[13] did not repeal, alter, or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC.[14] The former merely serves as an internal guideline for the prosecutors to observe before they give their consent to the proposed Plea Bargains.[15] Since Plea Bargaining is a mutual

[11] Estipona v. Lobrigo, G.R. No. 226679, August 15, 2017.
[12] Estipona v. Lobrigo, G.R. No. 226679, August 15, 2017.
[13] DOJ Circular No. 27-18, Amended Guidelines on Plea Bargaining for Republic Act No. 9165, https://www.doj.gov.ph/files/2018/DC/DC027-2018JUN%20Amended%20Guidelines%20for%20Plea%20Bargaining%20dtd%2026%20Jun%202018(1).pdf
[14] A.M. No. 18-03-16-SC, Adoption of the Plea Bargaining Framework in Drugs Cases, https://oca.judiciary.gov.ph/wp-content/uploads/2018/05/OCA-Circular-No.-90-2018.pdf
[15] Nurullaje Sayre vs. Judge Xenos, G.R. Nos. 24413 & 244415-16, February 18, 2020.

agreement between parties, DOJ Circular No. 27 also serves as the counter-proposal of the prosecutor to the offer of plea of guilty to a lesser offense by the accused.[16]

7. *Q: How is an offer for Plea Bargaining in drug cases initiated?*

A: An offer of Plea Bargaining must be initiated in writing through a formal motion filed by the accused in court.[17]

8. *Q: Can the accused plead to lesser offenses in Plea Bargaining?*

A: The answer would depend on the nature of the offense that the accused has been charged with, as enumerated in the Plea Bargaining Framework in Drugs Cases (OCA Circular No. 90-2018).

For example, the Circular provides that an acceptable plea bargain of one charged with the Possession of Dangerous Drugs would be the lesser offense of possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.

9. *Q: When is a lesser offense necessarily included in another offense?*

A: Rule 116, Section 5 of the Rules of Court provides that an offense may be said to necessarily include another when some of the essential ingredients of the former as alleged in the information constitute the latter. Alternatively, an offense is necessarily included in another when all the ingredients of the former constitute a part of the elements constituting the latter.[18]

It is one of the basic requisites in the Rules of Criminal Procedure in order for the accused to be able to offer a Plea Bargain. The essence of a Plea Bargaining agreement is that the accused is allowed to plead guilty to a lesser crime.

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[16] Legal Services, Philippine National Police, Updates on Plea Bargaining in Drug Cases, May 20, 2022, http://ls.pnp.gov.ph/updates-on-plea-bargaining-in-drug-cases/
[17] Supreme Court of the Philippines, SC Provides Clarificatory Guidelines on Plea-Bargaining in Drugs Cases, July 28, 2022, https://sc.judiciary.gov.ph/28879/
[18] ROC, Rule 116, Sec. 5.

An example of a lesser offense necessarily included in another is the crime of homicide, which is necessarily included in the greater crime of murder.[19] In homicide, the elements are: 1) that a person was killed; 2) that the accused killed him without any justifying circumstance; 3) that the accused had the intention to kill; and 4) that the killing was not attended by any of the qualifying circumstances of Murder, or by that of Parricide or Infanticide.

These elements clearly constitute a part of the elements of murder, which are as follows: 1) that a person was killed; 2) that the accused killed him; 3) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248 of the Revised Penal Code; and 4) that the killing is not Parricide or Infanticide.

10. *Q: What are considered lesser offenses under a drug charge?*

A: Drug offenses and lesser drug offenses which are necessarily included in other offenses are as follows:

a) Possession of Dangerous Drugs
b) Use of Dangerous Drugs
c) Sale, Trading, etc. of Dangerous Drugs
d) Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs
e) Possession of Equipment, Apparatus and Other Paraphernalia for Dangerous Drugs during Parties, Social Gatherings or Meetings

11. *Q: What happens after a proposal for Plea Bargaining is submitted?*

A: Once the proposal for Plea Bargaining is submitted, the judge must order a Drug Dependency Assessment, where the accused either:

a) Admits drug use;
b) Denies it but is thereafter found positive in a drug dependency test; or
c) Is found negative for drug use or dependency.[20]

[19] People v. Cortez, G.R. No. 131924, December 26, 2000
[20] A.M. No. 18-03-16-SC, Adoption of the Plea Bargaining Framework in Drugs Cases, https://oca.judiciary.gov.ph/wp-content/uploads/2018/05/OCA-Circular-No.-90-2018.pdf

12. *Q: What are the processes that an accused must undergo if he admits or is found positive for drug use?*

A: An accused who admits or is found positive for drug use must undergo treatment and rehabilitation for a minimum period of six (6) months. This period is credited to the accused's penalty. If the penalty is still unserved, then the period is credited to the accused's after-care and follow-up program.[21]

13. *Q: What are the processes that the accused must undergo if he is found negative for drug use?*

A: An accused who is found negative for drug use or dependency shall be released on time served. If not, the accused must serve his or her sentence in jail minus the counseling period had at the rehabilitation center.[22]

14. *Q: May the accused demand, as a matter of right, the acceptance of the offer to plead guilty to a lesser offense?*

A: No. As a rule, Plea Bargaining requires the mutual agreement of the parties and remains subject to the approval of the court. Regardless of the mutual agreement of the parties, the acceptance of the offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the court.[23]

15. *Q: May the judge deny a plea of guilty to a lesser offense even after an agreement between the prosecution and the defense?*

A: Yes. Though the prosecution and the defense may agree to enter into a Plea Bargain, it does not follow that the courts will automatically approve the proposal. Judges must still exercise sound discretion in granting or denying

[21] Supreme Court of the Philippines, SC Provides Clarificatory Guidelines on Plea-Bargaining in Drugs Cases, July 28, 2022, https://sc.judiciary.gov.ph/28879/
[22] Supreme Court of the Philippines, SC Provides Clarificatory Guidelines on Plea-Bargaining in Drugs Cases, July 28, 2022, https://sc.judiciary.gov.ph/28879/
[23] Supreme Court of the Philippines, SC Provides Clarificatory Guidelines on Plea-Bargaining in Drugs Cases, July 28, 2022, https://sc.judiciary.gov.ph/28879/

Plea Bargaining, taking into account the relevant circumstances, including the character of the accused.[24]

16. *Q: Under what circumstances will the court refuse Plea Bargaining?*

A: The court shall not allow Plea Bargaining if the objection to the Plea Bargaining is valid and supported by evidence to the effect that:

a) The offender is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or
b) when the evidence of guilt is strong.[25]

The determination of whether guilt is strong or not is a matter of judicial discretion, exercisable only after evidence is submitted to the court at the hearing.[26]

To determine whether guilt is strong or not, the Court, in *People v. Tanes y Belmonte,* held that, after presentation of evidence of guilt is submitted to the court, the petitioner has the right to cross-examination and to introduce his own evidence in rebuttal. Mere affidavits or recital of their contents are not sufficient, as these are merely considered hearsay evidence unless the petitioner fails to object thereto.[27]

17. *Q: Who are considered recidivists and habitual offenders?*

A: Recidivists and habitual offenders are as follows:

a) Recidivist - The Revised Penal Code[28] defines a recidivist as one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the Code. The following requisites must concur to be considered a recidivist:

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[24] Supreme Court of the Philippines, SC Provides Clarificatory Guidelines on Plea-Bargaining in Drugs Cases, July 28, 2022, https://sc.judiciary.gov.ph/28879/
[25] Supreme Court of the Philippines, SC Provides Clarificatory Guidelines on Plea-Bargaining in Drugs Cases, July 28, 2022, https://sc.judiciary.gov.ph/28879/
[26] Teehankee vs. Director of Prisons, 76 Phil. 756, July 18, 1946.
[27] People v. Tanes y Belmonte, G.R. No. 240596, April 3, 2019.
[28] R.A. No. 3815, The Revised Penal Code of the Philippines, Article 14(9).

1. The offender is on trial for an offense;
2. The offender has been previously convicted by final judgment of another crime;
3. Both the first and second offenses are found in the same title of the Revised Penal Code; and
4. The offender is convicted of the new offense.

b) Habitual Offender - The Revised Penal Code contains the definition of what is a habitual offender or delinquent in Article 62[29], where a person shall be deemed to be a habitual delinquent, is within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robbery, theft, estafa or falsification, he is found guilty of any of said crimes a third time or oftener. To determine if an offender is a habitual delinquent, the following requisites must concur:

1. The offender must have been convicted of any of the following:
    a) Serious physical injuries;
    b) Less serious physical injuries;
    c) Robbery;
    d) Theft;
    e) Estafa; or
    f) Falsification.

2. After conviction or after serving the sentence for the first crime, he again committed, within 10 years from his release or first conviction, another instance of any of the crimes mentioned.

3. After his conviction or after serving the sentence for the second crime, he again committed, within 10 years from his release or second conviction, another instance of any of the crimes mentioned.

[29] R.A. No. 3815, The Revised Penal Code of the Philippines, Article 62.

18. *Q: What is the rationale for not allowing a proposed Plea Bargain if it does not conform with the A.M. No. 18-03-16-SC (Adoption of the Plea Bargaining Framework in Drugs Cases, April 10, 2018)?*

A: Under the Constitution, the Supreme Court shall have the following powers:

x x x

> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, x x x Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.[30]

A.M. No. 18-03-16-SC is a rule of procedure established pursuant to the rule-making power of the Supreme Court that serves as a framework and guide to the trial courts in Plea Bargaining violations of Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165).[31] Thus, if the proposed Plea Bargain does not conform with the rules established by the Supreme Court, such as the rules provided in A.M. No. 18-03-16-SC, then it would be fitting to not allow such a proposal.

19. *Q: Why do we need the Plea Bargaining Framework?*

A: In *Sayre v. Judge Xenos*, the Supreme Court has aptly explained that, "Plea Bargaining is a vital component of restorative justice."[32] Preferring to work on a court-sanctioned mutually satisfactory resolution of the case over lengthy and protracted trial benefits both the state and the accused. The Supreme Court further notes that, "By shortening the time between the original charge and the disposition, it enhances the rehabilitative prospects and redeeming characteristics of the offender when the trial court approves the Plea Bargain to a lesser offense."[33]

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[30] Sec. 5(5), Art. VIII, Constitution.
[31] Estipona v. Lobrigo, G.R. No. 226679, August 15, 2017.
[32] Nurullaje Sayre vs. Judge Xenos, G.R. Nos. 24413 & 244415-16, February 18, 2020.
[33] Nurullaje Sayre vs. Judge Xenos, G.R. Nos. 24413 & 244415-16, February 18, 2020.

20. *Q: What is the aim of allowing Plea Bargaining on drug cases?*

A: The aim is to rehabilitate, not punish, drug offenders.[34] *People v. Borras*[35] reminds us that the threat posed by drugs against human dignity and the integrity of society is malevolent and incessant. A pernicious effect is felt not only by the addicts themselves but also by their families. As a result, society's survival is endangered because its basic unit, the family, is the ultimate victim of the drug menace. Rehabilitation is thus key for these offenders' orderly reintegration into society.

Thus, a clearer and more simplified Plea Bargaining framework, well-deliberated upon by competent individuals learned in the intricacies of criminal law and procedure, will go a long way in guiding the bench and the bar when they are to be faced with Plea Bargaining in drug cases. As such, the Supreme Court deemed it necessary to adopt the Plea Bargaining Framework in Drugs cases, as seen below:[36]

Offense Charged			***Acceptable Plea Bargain***		**Remarks**
Section	**Penalty**	**Quantity**	**Section**	**Penalty**	
Section 11, par. 3. Possession of Dangerous Drugs (Where quantity of shabu, opium, morphine, heroin, cocaine is less than 5 grams)	12 years & 1 day to 20 years and fine ranging from P300,000 to P400,000	.01 gram to 4.99 grams	Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs	6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000 N.B.: The court is given the discretion to impose a minimum period and a maximum	In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependency test shall be required. If accused admits drug use, or denies it but

[34] Nurullaje Sayre vs. Judge Xenos, G.R. Nos. 24413 & 244415-16, February 18, 2020.
[35] People v. Borras, G.R. No. 250295, March 15, 2021.
[36] OCA Circ. No. 90-2018, Plea Bargaining Framework in Drugs Cases, May 4, 2018, https://oca.judiciary.gov.ph/wp-content/uploads/2018/05/OCA-Circular-No.-90-2018.pdf

Offense Charged			*Acceptable Plea Bargain*		Remarks
Section	**Penalty**	**Quantity**	**Section**	**Penalty**	
				period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.	is found positive after drug dependency test, he/she shall undergo treatment and rehabilitation for a period of not less than 6 months. Said period shall be credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/dependency, he/she will be released on time served, otherwise, he/she will serve his sentence in jail minus the counseling period at rehabilitation center. However, if accused applies for probation in
Section 11, par. 3. Possession of Dangerous Drugs (Where quantity of marijuana is less than 300 grams)	12 years and 1 day to 20 years and fine ranging from fine from P300,000 to P400,000	.01 gram to 299.99 grams	Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs	6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000 N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and	

Offense Charged			*Acceptable Plea Bargain*		**Remarks**
Section	**Penalty**	**Quantity**	**Section**	**Penalty**	
				1 day to 1 year may likewise be imposed.	offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Section 24 thereof, then the law on probation shall apply.
Section 11, par. 2. Possession of Dangerous Drugs (Where quantity of shabu, opium, morphine, heroin, cocaine is 5 grams or more but not exceeding 10 grams)	20 years to life imprisonment and fine ranging from P400,000 to P500,000	5 grams to 9.99 grams	Section 11, par. 3. Possession of Dangerous Drugs	12 years and 1 day to 20 years and a fine ranging from P300,000 to P400,000 N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law.	
		10 grams and above	No Plea Bargaining allowed		

Offense Charged			*Acceptable Plea Bargain*		Remarks
Section	**Penalty**	**Quantity**	**Section**	**Penalty**	
Section 11, par. 2. Possession of Dangerous Drugs (Where the quantity of marijuana is 300 grams or more but not exceeding 500 grams	20 years to life imprisonment and fine ranging from P400,000 to P500,000	300 grams to 499 grams	Section 11, par. 3. Possession of Dangerous Drugs	12 years and 1 day to 20 years and a fine ranging from P300,000 to P400,000 N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law.	
		500 grams and above	No Plea Bargaining allowed		
Section 12. Possession of Equipment, Apparatus and Other Paraphernalia for Dangerous Drugs	6 months and 1 day to 4 years and fine ranging from P10,000 to P50,000		Section 15. Use of Dangerous Drugs	6 months treatment and rehabilitation	If accused admits drug use, or denies drug use but found positive after drug dependency test.
				Undergo counselling program at rehabilitation center	If accused is found negative for drug use/dependency

Offense Charged			*Acceptable Plea Bargain*		Remarks
Section	**Penalty**	**Quantity**	**Section**	**Penalty**	
Section 14. Possession of Equipment, Apparatus and Other Paraphernalia for Dangerous Drugs during Parties, Social Gatherings or Meetings	Maximum penalty in Section 12		Section 15. Use of Dangerous Drugs	6 months treatment and rehabilitation	If accused admits drug use, or denies drug use but found positive after drug dependency test.
				Undergo counselling program at rehabilitation center	If accused is found negative for drug use/dependency
Section 5. Sale, Trading, etc. of Dangerous Drugs (Methamphetamine hydrochloride or shabu only)	Life Imprisonment to Death and fine ranging from P500,000 to P10,000,000	.01 gram to .99 grams (methamphetamine hydrochloride or shabu only)	Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs	6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000 N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6	In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependency test shall be required. If accused admits drug use, or denies it but is found positive after drug dependency test, he/she shall undergo treatment and rehabilitation for a period of not less

Offense Charged			*Acceptable Plea Bargain*		Remarks
Section	**Penalty**	**Quantity**	**Section**	**Penalty**	
				months and 1 day to 1 year may likewise be imposed.	than 6 months. Said period shall be credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/dependency, he/she will be released on time served, otherwise, he/she will serve his sentence in jail minus the counseling period at rehabilitation center. However, if accused applies for probation in offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in

Offense Charged			*Acceptable Plea Bargain*		Remarks
Section	**Penalty**	**Quantity**	**Section**	**Penalty**	
					relation to Section 24 thereof, then the law on probation shall apply.
		1.00 gram and above (methamphetamine hydrochloride or shabu only)	No Plea Bargaining allowed		
Section 5. Sale, Trading, etc. of Dangerous Drugs (Marijuana only)	Life Imprisonment to Death and fine ranging from P500,000 to P10,000,000	.01 gram to 9.99 grams of marijuana only	Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs	6 months and 1 day to 4 years and a fine ranging from P10,000 to P50,000 N.B.: The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1	In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependency test shall be required. If accused admits drug use, or denies it but is found positive after drug dependency test, he/she shall undergo treatment and rehabilitation for a period of not less than 6 months. Said

Offense Charged			*Acceptable Plea Bargain*		Remarks
Section	**Penalty**	**Quantity**	**Section**	**Penalty**	
				year may likewise be imposed.	period shall be credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/dependency, he/she will be released on time served, otherwise, he/she will serve his sentence in jail minus the counseling period at rehabilitation center. However, if accused applies for probation in offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Section 24

Offense Charged			*Acceptable Plea Bargain*		Remarks
Section	**Penalty**	**Quantity**	**Section**	**Penalty**	
					thereof, then the law on probation shall apply.
		10.00 grams of marijuana only and above	No Plea Bargain allowed		

21. *Q: May a person charged under the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165) apply for probation?*

A: Under A.M. No. 18-03-16-SC or the Adoption of the Plea Bargaining Framework in Drugs Cases, the Supreme Court has clarified that persons charged under the provisions of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165), may apply for probation. As such, the rules on probation as provided by the Probation Law of 1976 (P.D. No. 968) shall apply.

However, the framework has reiterated that persons charged under Section 5 of R.A. No. 9165 shall not be allowed to apply for probation since this provision pertains to drug trafficking and drug pushing. In addition, the framework has mentioned that if the imposable penalty is life imprisonment to death, the accused may not apply for probation.[37]

22. *Q: What is the applicable process for youth drug offenders?*

A: Board Regulation No. 6, Series 2019 of the Dangerous Drugs Board provides for an alternative that youth drug offenders or children in conflict with the law may undertake instead of resorting to formal court proceedings. These are in the form of treatment and care programs, and are akin to Plea Bargaining in such a way that the child is given the chance to undergo a rehabilitation program instead of being sentenced to a penalty.

[37] A.M. No. 18-03-16-SC, Adoption of the Plea Bargaining Framework in Drugs Cases.

The child must first undergo an ASSIST (Alcohol, Smoking, and Substance Involvement Screening Test) and/or drug dependency examination before he is given the corresponding treatment and care program in accordance with the following guidelines of Section 9 of the Board Regulation.

The Board Regulation also clarifies that children in conflict with the law may undergo treatment and the care program prior to or simultaneous with the intervention or diversion program required under the Juvenile Justice Act (R.A. No. 9344). This is upon the determination of an LSWDO or social welfare and development officer.

The treatment and care programs offered under the Board Regulation may only commence with the consent of the parents or guardian of the child or upon an order issued by the court. Together with such consent, the parent or the guardian must also agree to subject the child to a random drug test for the planned duration of the treatment and care program.[38]

SUMMARY OF GUIDELINES ON PLEA BARGAINING IN DRUG CASES

Consolidating all the applicable rules on Plea Bargaining in drug cases, the Supreme Court released clarificatory guidelines which can be found on the Supreme Court's website (https://sc.judiciary.gov.ph/28879/) and reproduced below:[39]

1. Offers for Plea Bargaining must be initiated in writing by way of a formal written motion filed by the accused in court.

2. The lesser offense which the accused proposes to plead guilty to must necessarily be included in the offense charged.

3. Upon receipt of the proposal for Plea Bargaining that is compliant with the provisions of the Court's Plea Bargaining Framework in Drugs Cases, the judge shall order that a drug dependency assessment be

[38] Board Regulation No. 6, Series 2019 of the Dangerous Drugs Board.
[39] Supreme Court of the Philippines, SC Provides Clarificatory Guidelines on Plea-Bargaining in Drugs Cases, July 28, 2022, https://sc.judiciary.gov.ph/28879/

administered. If the accused admits drug use, or denies it but is found positive after a drug dependency test, then he/she shall undergo treatment and rehabilitation for a period of not less than six (6) months. Said period shall be credited to his/her penalty and the period of his/her after-care and follow-up program if the penalty is still unserved. If the accused is found negative for drug use/dependency, then he/she will be released on time served, otherwise, he/she will serve his/her sentence in jail minus the counselling period at the rehabilitation center.

4. As a rule, Plea Bargaining requires the mutual agreement of the parties and remains subject to the approval of the court. Regardless of the mutual agreement of the parties, the acceptance of the offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the court.

   Though the prosecution and the defense may agree to enter into a Plea Bargain, it does not follow that the courts will automatically approve the proposal. Judges must still exercise sound discretion in granting or denying Plea Bargaining, taking into account the relevant circumstances, including the character of the accused.

5. The court shall not allow Plea Bargaining if the objection to the Plea Bargaining is valid and supported by evidence to the effect that:

   a) the offender is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or
   b) when the evidence of guilt is strong.

6. Plea Bargaining in drugs cases shall not be allowed when the proposed Plea Bargain does not conform to the Court-issued Plea Bargaining Framework in Drugs Cases.

7. Judges may overrule the objection of the prosecution if it is based solely on the ground that the accused's Plea Bargaining proposal is

inconsistent with the acceptable Plea Bargain under any internal rules or guidelines of the DOJ, though in accordance with the Plea Bargaining framework issued by the Court, if any.

8. If the prosecution objects to the accused's Plea Bargaining proposal due to the circumstances enumerated in item no. 5, the trial court is mandated to hear the prosecution's objection and rule on the merits thereof. If the trial court finds the objection meritorious, it shall order the continuation of the criminal proceedings.

9. If an accused applies for probation in offenses punishable under the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165), other than for illegal drug trafficking or pushing under Section 5 in relation to Section 24 thereof, then the law on probation shall apply.