

Philippine Military Academy
CADET CORPS ARMED FORCES OF THE PHILIPPINES
PMA CADET REVIEW AND APPEALS BOARD
Fort Gregorio Del Pilar, Baguio City

CADET FIRST CLASS ALDRIN JEFF CUDIA,
Appellant.

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APPEAL MEMORANDUM

Appellant, Cadet First Class **ALDRIN JEFF CUDIA**, assisted by the Public Attorney's Office, unto the Honorable Board, hereby submits his Appeal Memorandum seeking the reinvestigation and/or retrial of his case, and in support hereof, alleges that:

TIMELINESS

On 24 February, 2014, appellant requested, thru a handwritten letter-request, for additional time or until 04 March 2014, to submit new evidence to support his appeal.

Appellant engaged the services of undersigned counsel on 25 February 2014. On 04 March 2014, appellant was constrained to file, thru his undersigned counsel, a Motion for Extension of Time to File Appeal, requesting for an additional extension of fifteen days from 04 March 2014, or until 19 March 2014, considering that his earlier requests for copies of documents pertaining to his case has not yet been favorably acted upon and his supposed witnesses, who are all cadets, were ordered by the Academy not to communicate with the appellant.

On 11 March 2014, appellant, thru the undersigned counsel, received a letter from MAJOR GENERAL OSCAR LOPEZ informing him that the request for extension was denied. Hence, appellant is filing his appeal on this date.

THE CASE

This case is an appeal, pursuant to the provisions on Review and Retrial of the Honor Code of the Philippine Military Academy, from the decision of the Honor Committee dismissing the appellant from the Cadet Corps of the Philippine Military Academy for alleged violation of the Honor Code.

THE FACTS

The antecedent facts are as follows:

1. Appellant was issued a Delinquency Report dated November 19, 2013, for the offense of *“Late for two (2) minutes in his Eng 412 class o/a 14 1500H-1600H Nov 2013”*;
2. Appellant previously gave his explanation stating that *“Our class was dismissed a (little) bit late and I came directly from 4th period class....”*. He further explained:
 - 2.1. Before the end of the class hour, 1500H, his teacher, Dr. Monica Costales, instructed him and some other classmates to wait for her so she can give their section grade;
 - 2.2. And for the reason that other cadets (1CL ARCANGEL, 1CL DIAZ, 1CL MIRANDA, and 1CL NARCISO) were also present, and the instructor, Dr. Monica Costales, was with them, appellant used, in his explanation, the word *“class”*;
 - 2.3. Considering further that it was upon the instruction of Dr. Costales that they waited, appellant also used the word *“dismissed”*;
 - 2.4. Appellant waited for around 45 seconds to 1 minute 30 seconds, that is why he used the phrase *“a little bit late”* in his said explanation;
3. On December 19, 2013, appellant was given 11 demerits and 13 touring hours. He obeyed the instruction, but, believing that he did not commit any violation, he approached their Tactical Officer, MAJOR HINDANG PAF to seek clarification;
4. MAJOR HINDANG told him that the basis of the penalty was the result of his (Major Hindang) conversation with Dr. Costales who was asked if she ever

dismissed her class late. According to MAJOR HINDANG, Dr. Costales answered in the negative. MAJOR HINDANG likewise added that they have a protocol to dismiss the class 10-15 minutes before 1500H;

5. Appellant explained to MAJOR HINDANG, in addition to his previous explanation to his delinquency report that:

“Sir, I strongly believe that I am not in control of the circumstances, our 4th period class ended 1500 and our 5th class, which is ENG412, started 1500H also. Immediately after 4th period class, I went to my next class without any intention of being late Sir.”

6. MAJOR HINDANG told appellant that since the report of his violation was in writing; his appeal should also be in writing. Hence, on that same day, appellant made a letter addressed to the Senior Tactical Officer, MAJOR BENJAMIN LEANDER, seeking reconsideration of the meted punishment. In the said letter, appellant explained:

“Sir, I strongly believe that I am not in control of the circumstances, our 4th period class ended 1500H and our 5th period class, which is ENG412, started 1500H also. Immediately after 4th period class, I went to my next class without any intention of being late Sir.”

7. On January 7, 2014, while appellant was waiting for the action on his motion for reconsideration, MAJOR HINDANG reported him for a violation of the Honor Code. He only learned that his motion for reconsideration was denied when he inquired to their Senior Tactical Officer, MAJOR BENJAMIN LEANDER, on January 24, 2014.

8. The Honor Report states:

“Lying that is giving statement that perverts the truth in his written appeal, stating that his 4th period class ended at 1500H that made him late in the succeeding class.”

9. After receiving a copy of this Honor Report, appellant inquired to the Honor Committee Chairman, cadet 1CL MOGOL, what MAJOR HINDANG meant in his report. Cadet 1CL MOGOL answered that MAJOR HINDANG's report was based on his conversation with their instructors, classmates, and what appellant wrote in his request for reconsideration of meted punishment addressed to MAJOR LEANDER. He likewise added that MAJOR HINDANG waited for him to make a written statement so he can have a basis to file a an honor report against him;
10. Considering that Dr. Costales, who can shed light on the matter, was on an emergency leave, appellant verbally requested that he be given an extension of time to submit his explanation. This request was granted;
11. On 13 January 2014, Dr. Costales sent appellant the following text messages, to wit:

"Gud pm cdt cudia. Mam belandres gave me bkground na. She told me it's a report dated November. When maj hindang ask me, no time referens."

04:25:11 pm.

"All the while I thot he was referring to dismissal during last day decembr. presume they wil finish early bec its grp work.."

04:29:21 pm. (**ANNEX "A"**)

12. The following day, appellant and Cadet ARCANGEL approached Dr. Costales for further details. Dr. Costales explained that when MAJOR HINDANG asked her, they were not in the same time reference;
13. Appellant subsequently submitted a letter which explains his side with respect to his honor report, viz:

"Sir,

We had an LE that day (14 November 2013) in OR432 class. When the first bell rang (1455), I stood up, reviewed my paper and submitted it to

my instructor, Ms. Costales. After which, I and Cadet 1cl Arcangel asked for some query with regards to the deductions of our previous LE. Our instructor gladly answered our question. She then told me that she will give me the copy of our section grade, so I waited at the hallway outside the ACAD5 office, and then she came out of the room and gave me a copy of the grades. Cadet Arcangel, Cadet Narciso and I immediately went to our 5th period Class which is ENG412.”

14. A preliminary investigation team composed of the Honor Committee members from Foxtrot Company (three First Class Cadets), and the Honor Committee Chairman formalized the alleged *Honor Violation* case against appellant;
15. The Honor Committee which would hear appellant’s case was formed and composed of nine (9) voting members (**1CL FANTIN “C”, 1CL ARLEGUI “H”, 1CL MARTAL “E”, 1CL CABRIDO “E”, 1CL AYADA “C”, 1CL LAGURA “H”, 2CL CARINO “E”, 2CL MARTINEZ “B”, and 2CL TARAYAO “G”**), the Honor Committee Chairman (**1CL MOGOL**) and the Presiding Officer (**1CL SALVACION “D”**);
16. On the first night of his trial, appellant was called and asked what is his plea; appellant answered “I did not violate the honor code and system”;
17. Immediately after the trial, appellant was informed that if one (1) out of the nine (9) members votes “Not Guilty”, he will have a verdict of acquittal. In fact, the Honor Code itself provides that:

“(a) unanimous vote (9 votes) of GUILTY decides that a cadet is found guilty of violating the Honor Code.”
18. During the proceedings, there was a video recorder at the back and a voice recorder in front;
19. Before the verdict was given, appellant already served nine (9) hours of the thirteen (13) touring hours penalty which he sought to be reconsidered;

20. When appellant was informed by the Honor Committee Chairman (1CL MOGOL) of the “Guilty” verdict, he immediately inquired as to the grounds or reason for the same. 1CL MOGOL answered that it is confidential since he (appellant) will still appeal the same;
21. Appellant later learned that initially, the vote of the Honor Committee voting members was “**8 Guilty: 1 Not Guilty**” which would have resulted to a verdict of acquittal. That the Presiding Officer (1CL Salvacion) already announced this;
22. However, the Honor Committee Chairman (1CL Mogol) ordered the voting members to go to the secret room. That after their “discussion”, the verdict became a unanimous vote of “Guilty”. This can be proven by the affidavit of Commander Junjie Tabuada, a copy of which is hereto attached as **Annex “A”**. The said affidavit states that:

“1. That after CDT 1CL CUDIA convicted for honor violation, I cannot remember exactly the date but sometime in the morning of 23rd or 24th of January 2014, I was in my office filling up forms for the renewal of my passport, CDT 1CL LAGURA entered and had business with myself;

“2. When he was about to leave I called him, “**Lags, halika muna dito,**” and he approached me and I let him sit down in the chair in front of my table. I told and asked him, “**Talagang nadali si Cudia ah.....ano ba ang nangyari? Mag-tagaolog or mag-Bisaya ka?**” He replied, “**Talagang NOT GUILTY ang vote ko sa kanya sir,**” and I asked him, “**oh, bakit naging guilty di ba pag may isang nag NOT GUILTY, abswelto na?**” He replied “**Chinamber ako sir, bale pinapa-justify kung bakit NOT GUILTY vote ko, at na-pressure din ako sir kaya binago ko, sir.**” So, I told him, “**sayang sya, matalino at mabait pa naman**”

and he replied “*oo nga sir*”. After that conversation, I let him go.”

23. On January 22, 2014, the appellant was immediately placed in a holding center inside the Academy, in which he shall remain until the appeal is resolved.
24. On January 24, 2014, the appellant filed his Written Appeal before the Chairman of the Honor Committee (ANNEX “B”), which is not acted upon until date.
25. On February 13, 2014, the appellant submitted a letter to the Office of the Commandant of Cadets (ANNEX “C”), which until present has not been responded to.
26. There being no clear response to all the documents that the appellant submitted, his parents, without any other recourse, submitted a letter dated February 18, 2014 (ANNEX “D”), to Major General Oscar Lopez, Superintendent, PMA, a copy of which was furnished the Chief of Staff of the AFP and other concerned officers.
27. Sometime thereafter, the Chief of Staff directed the Superintendent to Review the case of the appellant, who in turn, referred the matter to the Cadet Review and Appeals Board.
28. Hence, this Memorandum on Appeal.

GROUNDS

I.

THERE IS NEW EVIDENCE TO WARRANT A REVIEW OR REHEARING OF THE CASE.

II.

THE HONOR COMMITTEE GRAVELY ABUSED ITS DISCRETION WHEN IT CHAMBERED ONE OF ITS VOTING MEMBERS.

III.

**THE HONOR COMMITTEE GRAVELY ABUSED ITS
DISCRETION WHEN IT FAILED TO CONSIDER THE
EXPLANATION OF DR. COSTALES.**

DISCUSSION

I.

Appellant respectfully submits that there is new material evidence to warrant a review and/or rehearing of the instant case. For one, there is the sworn Affidavit of Commander (PN) JUNJIE B. TABUANDA, wherein he stated under oath that:

“1. That after **CDT 1CL CUDIA** convicted for honor violation, I cannot remember exactly the date but sometime in the morning of 23rd or 24th of January 2014, I was in my office filling up forms for the renewal of my passport, **CDT 1CL LAGURA** entered and had business with myself;

“2. When he was about to leave I called him, **“Lags, halika muna dito,”** and he approached me and I let him sit down in the chair in front of my table. I told and asked him, **“Talagang nadali si Cudia ah.....ano ba ang nangyari? Mag-tagalog or mag-Bisaya ka?”** He replied, **“Talagang NOT GUILTY ang vote ko sa kanya sir,”** and I asked him, **“oh, bakit naging guilty di ba pag may isang nag NOT GUILTY, abswelto na?”** He replied **“Chinamber ako sir, bale pinapa-justify kung bakit NOT GUILTY vote ko, at na-pressure din ako sir kaya binago ko, sir.”** So, I told him, **“sayang sya, matalino at mabait pa naman”** and he replied **“oo nga sir”**. After that conversation, I let him go.”

For another, the said admission of 1CL LAGURA is a vital information which could shed light to the case of appellant, however, appellant cannot obtain a sworn statement from said cadet because of the Order to

Ostracize which could make the said cadet liable if allowed to talk with appellant. Also, appellant cannot access or approach the cadets who were present during his trial and who witnessed the said 8-1 voting result as they are subject to the same Order to Ostracize.

This practice of penalizing cadets who violates the Order to Ostracize runs afoul with the basic tenets of due process, which certainly is the bedrock of the trial of the appellant even when done under the auspices of a closed organization like the Corps of Cadet of the Armed Forces of the Philippines.

The Honorable Supreme Court in the case of **Non vs. Dames, G.R. No. 89317, 29 May 1990**, acting *en banc*, citing the case of **Guzman vs. National University, G.R. No. 68288, 11 July 1986**, explained that the imposition of disciplinary sanctions requires observance of procedural due process, thus:

“Xxx. There are withal minimum standards which must be met to satisfy the demands of procedural due process; and these are, that (1) the students must be informed in writing of the nature and cause of any accusation against them; (2) they have the right to answer the charges against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.”

In the case at bar, appellant was not accorded his right to confront his accusers; he was not informed of the evidence against him and neither was he allowed to adduce evidence in his behalf . **More importantly, evidence which are in the possession of the Honor Committee cannot be brought out under the guise of confidentiality of proceedings**, which is supposedly not to be applied against the appellant himself.

Moreover, appellant respectfully submits that the penalty imposed on him for alleged violation of the Honor Code is what we may describe as “unjust and cruel” punishment. It is unjust and cruel because it denies the appellant his right to graduate with his batchmates despite the fact that he had no academic deficiencies or violated the PMA’s equivalent of rules of conduct and discipline that civilian schools have adopted to maintain proper decorum and conduct within school premises.

The penalty of dismissal is certainly not commensurate to the fact that appellant is a graduating cadet and what he allegedly committed does not amount to an academic deficiency or an intentional and flagrant violation of PMA non-academic rules and regulation.

In the case of **Non**, cited *supra*, the Honorable Supreme Court further explained that the penalty imposed must be proportionate to the offense, thus:

“Moreover, the penalty imposed must be proportionate to the offense committed. As stated in Malabanan, ‘[i]f the concept of proportionality between the offense committed and sanction imposed is not followed, an element of arbitrariness intrudes.’”

II.

The deliberation/discussion in the secret room of the Honor Committee, which was called by the Chairman, after the votes of the members were already casted, and after the Presiding Officer already announced its result of “8 GUILTY:1 NOT GUILTY” was not sanctioned by the rules.

Nowhere in the procedures outlined in the Honor Code sanction this procedure done by the Honor Committee chair cadet 1CL MOGOL. There is nothing in the Rules that would allow the Honor Committee chair to order the chambering of a cadet who voted contrary to the majority and subject him to reconsider his vote in order to reflect a unanimous vote.

In the case at bar, the procedure adopted by cadet 1CL MOGOL is not only irregular but puts to serious doubt his intentions against appellant. It must be emphasized that cadet 1CL MOGOL previously charged appellant with an Honor violation sometime in November 2013 allegedly for cheating, i.e., conniving, tutoring his fellow cadets on a difficult topic, but the same was dismissed for lack of merit. Appellant tutored his fellow cadets on orders of his instructor. Even cadet 1CL MOGOL benefitted from such act of appellant because he even inquired whether his solution was correct in that particular problem.

To repeat, the process of “chambering” the lone member of the Honor Committee (1CL LAGURA) who gave the vote of “NOT GUILTY” is a clear deviation from the procedures indicated in the Honor Code, and of appellant’s rights to procedural due process. This being so, the unanimous vote of “guilty”, and the eventual guilty verdict, which resulted from said second deliberation should be considered void.

III.

Appellant likewise submits that the written explanation (herein attached as Annex “E”) and certification (herein attached as Annex “F”) of Dr. Maria Monica Costales shows that appellant is not guilty of being late in class.

Dr. Costales written explanation reads:

“I agree and consider that because Cadet Cudia is under my instruction to wait, and the other cadets still have business with me, it is reasonable enough for him to say that “Our class was dismissed a bit late” (dealing with matter of seconds or a \minute particularly 45 seconds to 1 minute and 30 seconds)
“And with concern to OR432 class, I can say it ended on time (1500H).

“Sgd. MCOSTALES w/attached certification”

Dr. Costales' written explanation and certification sheds light to the (mis) perception of MAJOR HINDANG in believing that appellant was lying when he explained that *"Our class was dismissed a (little) bit late and I came directly from 4th period class..."* He was not lying then, but there is a grain of truth in his explanation.

If in doubt of these written explanation and certification, the Honor Committee should have asked Dr. Costales to personally appear before them to shed light on the claim of appellant which is alleged to be one of "lying" in violation of the Honor Code. When the Honor Committee allegedly called Dr. Costales, appellant was not there to confront her and explained to her what actually happened. As it was, Dr. Costales had an impression that was very much different to that which appellant is now being subjected to violation of the Honor Code.

Thus, appellant respectfully submits that he never violated the Honor Code.

PRAYER

WHEREFORE, in view of the foregoing, it is respectfully prayed of this Honorable Office to grant a review or rehearing of the case, and to declare the decision of the Honor Committee against the appellant as VOID.

Other just and equitable reliefs are likewise prayed for.

11 March 2014, Baguio City.

PUBLIC ATTORNEY'S OFFICE

Counsel of Cadet First Class Aldrin Jeff Cudia

By:

HENRY M. FRANCISCO

OIC, Regional Public Attorney

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IBP Lifetime No. 05828; 05-10-2006

MCLE COMPLIANCE NO. III-0000107; 04-03-2008

MCLE COMPLIANCE NO. IV 0020951; June 20, 2013

Copy furnished:

Superintendent, PMA

Commandant, CCAFP
Fort Del Pilar, Baguio City

REPUBLIC OF THE PHILIPPINES)
CITY OF BAGUIO) S.S.

VERIFICATION

I, **First Class Cadet ALDRIN JEFF CUDIA**, of legal age, Filipino citizen and with postal address at Philippine Military Academy, Loakan Road, Baguio City, declare under oath that:

1. I am the appellant in the above-entitled case;

2. I have caused the preparation of the foregoing APPEAL MEMORANDUM, the contents of which I affirm as true and correct based on my own personal knowledge and on authentic records.

IN WITNESS WHEREOF, I have hereunto set my hand this 11 March 2014 in Baguio City, Philippines.

ALDRIN JEFF CUDIA

Affiant

SUBSCRIBED AND SWORN to before me this 11 March 2014, in Baguio City, Philippines. Affiant is personally known to me, and he avowed under penalty of law to the truth of all the foregoing.