

SECOND DIVISION

[G.R. NO. 166980, April 03, 2007]

**CARMELO C. BERNARDO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND F.T. YLANG-YLANG MARKETING
CORPORATION, RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

Petitioner Carmelo C. Bernardo assails the Resolutions^[1] of the Court of Appeals (CA) dated July 30, 2004 and January 14, 2005 dismissing his petition and denying reconsideration, respectively.

Petitioner was charged before the Metropolitan Trial Court (MeTC) of Manila with six counts of violation of *Batas Pambansa Blg. 22* (B.P. 22), otherwise known as the Bouncing Checks Law, for issuing on December 3, 1997 six postdated checks in equal amounts of P22,500. Save for the check numbers and dates of maturity, four Informations under Criminal Case Nos. 320977 to 320980 were similarly worded as follows:

That on or about December 3, 1997, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully, feloniously make or draw and issue to F.T. YLANG-YLANG MARKETING, CORP. rep. by Dennis Tan to apply on account or for value PHILIPPINE SAVINGS BANK check no. 0007806 [0007805, 0007804, 0007803] dated April 30, [March 30, February 28, January 30] 1998 payable to YLANG-YLANG MFG. in the amount of P22,500.00 said accused well knowing that at the time of issue she did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for reason "Account Closed" and despite receipt of notice of such dishonor, said accused failed to pay said F.T. YLANG-YLANG MARKETING CORP. the amount of the check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

Contrary to law.^[2]

The two Informations under Criminal Case Nos. 320975-76 averred that Check Nos. 0007808 and 0007807 respectively dated June 30, 1998 and May 30, 1998 "would be dishonored by the drawee bank for the reason "Account Closed" if presented for payment as the account against which it was drawn ha[d] already been closed even before [their] said date[s]."^[3]

Upon arraignment, petitioner, assisted by a counsel *de officio*, pleaded "not guilty" to

the offenses charged. At the pre-trial conference on August 25, 1999, petitioner failed to appear despite notice, prompting Branch 24 of the MeTC to issue a warrant of arrest against him and set the cases for trial *in absentia*.

After the prosecution presented its first witness, petitioner filed a Waiver of Appearance, a Motion to Lift Warrant of Arrest, and a Motion to Quash on the ground that the facts charged in the Informations under Criminal Case Nos. 320975-76 do not constitute an offense.

By Order of April 5, 2000, the trial court lifted the warrant of arrest in view of petitioner's appearance but denied the Motion to Quash for lack of merit.

At the following trial date, petitioner failed to appear despite notice, drawing the trial court to proceed with his trial *in absentia* and issue warrant of arrest^[4] against him.

By Decision^[5] of October 23, 2001 promulgated *in absentia* on December 13, 2001, the trial court found petitioner guilty beyond reasonable doubt of violating B.P. 22 in all the cases. He was, in each case, sentenced to suffer the penalty of imprisonment of One (1) Year, to pay a fine of Twenty-Two Thousand Five Hundred Pesos (P22,500), and to indemnify private complainant in the amount of Twenty-Two Thousand Five Hundred Pesos (P22,500).

Ten months following the promulgation of the judgment, petitioner posted a bond before another branch of the court. Petitioner having been convicted and no motion having been filed for his provisional liberty pending any appeal from or motion for reconsideration of the Decision, the trial court cancelled the bond and issued an alias warrant of arrest.^[6]

Petitioner thereupon filed an Urgent Motion for New Trial and/or to Set Aside Trial and Judgment (Motion for New Trial) which was, by Order^[7] of January 10, 2003, denied following his and his counsel's failure to appear at the hearing of the motion and comply with the rule on proper service of a motion.^[8] Petitioner's Urgent Motion for Reconsideration was likewise denied, by Order^[9] of May 26, 2003.

Petitioner appealed the Orders dated January 10, 2003 and May 26, 2003 as well as the Decision dated October 23, 2001 to the Regional Trial Court (RTC) of Manila, Branch 26 of which, by Decision of December 22, 2003, affirmed^[10] the judgment with modification as to the penalties imposed, thus:

WHEREFORE PREMISES CONSIDERED, the appealed decision is hereby affirmed with modification. This Court finds accused/appellant Carmelo C. Bernardo GUILTY beyond reasonable doubt for Violation of Batas Pambansa Bilang 22 but set [sic] aside the penalty of imprisonment and hereby sentences her [sic] to pay a fine of P22,500.00 in each case, with subsidiary imprisonment in case of insolvency or non-payment not to exceed six (6) months, and, to pay private complainant F.T. YLANG-YLANG MARKETING CORPORATION the total amount of P113,500.00 by way of indemnity.

Meanwhile, the alias warrant of arrest issued against accused x x x

is hereby ordered lifted and set aside.

No pronouncement as to costs. (Underscoring supplied)

SO ORDERED.^[11]

Petitioner filed a Motion for Partial Reconsideration of the RTC decision but it was denied.

Unsatisfied, petitioner elevated the case to the CA.

Petitioner filed with the appellate court a Motion for Extension of Time to File Petition for Review within 30 days from June 1, 2004, the 15th day from his counsel's receipt of the RTC Order denying his Motion for Partial Reconsideration.

The Court of Appeals, by Resolution of June 21, 2004, granted petitioner an extension, but only 15 days pursuant to Section 1 of Rule 42,^[12] to file his Petition.

Apparently unaware of the above-said Resolution of June 21, 2004 under which his petition would be filed not later than June 16, 2004, petitioner used up the 30-day extension sought and filed his petition on July 1, 2004. Petitioner in fact received the June 21, 2004 Resolution only on July 9, 2004.^[13]

By Resolution^[14] of July 30, 2004, the appellate court denied petitioner's petition due course for having been filed 15 days late and for failure to attach the MeTC Decision and other pertinent and material documents. Petitioner's Motion for Reconsideration was likewise denied by Resolution^[15] of January 14, 2005, the appellate court noting that the MeTC Decision attached to the Motion for Reconsideration was a mere photocopy and uncertified.

Hence, the instant petition faulting the appellate court:

A. . . . IN RECKONING THE PERIOD OF 15 DAYS EXTENSION FROM THE EXPIRY DATE OF THE ORIGINAL PERIOD OF 15 DAYS FROM RECEIPT OF THE DECISION OF THE REGIONAL TRIAL COURT OR FINAL ORDER APPEALED FROM, INSTEAD OF FROM DATE OF THE RECEIPT OF THE ORDER GRANTING EXTENSION;

B. . . . IN APPLYING THE RULES OF PROCEDURE VERY STRICTLY AND IN UTTER DISREGARD OF ITS INTERNAL RULES WHICH LIBERALLY ALLOW COMPLETION OF PORTIONS OF RECORDS IN COMPLIANCE WITH THE RULES AND THE SETTLED JURISPRUDENCE APPLYING LIBERALLY THE RULES OF PROCEDURE;

C. . . . [IN NOT] CONSIDER[ING] THE MERITS OF THE PETITION FOR REVIEW.^[16] (Underscoring supplied)

Petitioner argues that the 15-day extension granted to him by the appellate court should be reckoned from his date of receipt of its June 21, 2004 Resolution.

The argument fails. A.M. No. 00-2-14-SC^[17] issued on February 29, 2000 is clear. It provides that "[a]ny extension of time to file the required pleading should . . . be counted from the expiration of the period . . ." The extension should thus be tacked to the original period, to commence immediately after the expiration of such period. The court has no discretion to reckon the commencement of the extension from a date later than the expiration of such original period, not even if the expiry date is a Saturday, Sunday, or a legal holiday.^[18]

Petitioner's reliance on the 1989 case of *Vda. de Capulong v. Workmen's Insurance Co., Inc.*^[19] on this point does not thus lie. Parenthetically, the factual milieus in *Vda. de Capulong* and the present case are dissimilar. The respondent in *Vda. de Capulong* specifically moved that it be given an additional period "from receipt of the order" of the court allowing extension, and the court granted an extension of time without indicating when it would commence. In the present case, petitioner prayed for a period of extension to be counted from the expiration of the original period or "from June 1, 2004," which date the appellate court correctly used in reckoning the extension.^[20]

Petitioner goes on to fault the appellate court in not resolving his motion for extension before the expiration of the 15-day extension so that he would have known that his request for 30 days was not granted.

Petitioner's position does not lie too.

Section 1 of Rule 42 is clear. The Court of Appeals may grant an "additional period of 15 days only" within which to file the petition for review. Albeit under the same section, a "further extension" not to exceed 15 days may be granted "for the most compelling reason," petitioner had no basis to assume that his request for a 30-day extension is meritorious and would be granted.^[21]

Motions for extension are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extension or postponement would be granted or that they would be granted the length of time they pray for.^[22]

Petitioner claims, however, that his motion for extension presented a compelling reason for the grant of a further extension. Justifying the 30-day period sought, petitioner explains that he was implicitly seeking both a 15-day extension and a further extension of 15 days.

The wording of the rule with respect to further extension is couched in restrictive terms. Section 1 of Rule 42 provides that "[n]o further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days."

Petitioner's motion for extension was anchored on a lone ground, his counsel's being "pre-occupied in the preparation of petitions, memoranda, briefs, and other lengthy pleadings in cases as important as this case" and in "daily court appearance and personal commitments." Sustaining petitioner's lone ground would obliterate the distinguishing essence of a *further* extension for it would do away with the necessity of presenting compelling grounds addressed to the sound discretion of the court.