

SECOND DIVISION

[G.R. No. 173390, June 27, 2012]

MELCHOR L. LAGUA, PETITIONER, VS. THE HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

SERENO, J.:

In dismissing the present Petition filed under Rule 65 of the Rules of Court, we find no valid, justifiable reason for petitioner's failure to file his appellant's brief with the Court of Appeals (CA) that would warrant a reversal of the CA Resolutions dated 25 November 2005^[1] and 17 May 2006.^[2] To rule otherwise would make light of this Court's extraordinary *certiorari* jurisdiction, which operates only upon a clear showing of grave abuse of discretion tantamount to lack or excess of jurisdiction on the part of the appellate tribunal.^[3]

On 11 April 2003, the Regional Trial Court (RTC) of Pasig rendered a Decision in Criminal Case Nos. 118032-H and 118033-H finding the accused petitioner guilty of homicide and sentencing him to 8 years of *prision mayor* as minimum to 14 years of *reclusion temporal* as maximum in each case. On 19 May 2003, petitioner filed a Notice of Appeal with the CA, docketed as CA-G.R. CR No. 27423. On 18 June 2003, he filed a Very Urgent Petition for Bail Pending Appeal, which the CA granted without objection from the Office of the Solicitor General.^[4] On 6 November 2003, an Order of release upon bond was issued in his favor by the Division Clerk of Court of the CA.^[5]

On 14 October 2003, petitioner received the Order from the CA requiring, within 45 days from receipt thereof, or until 28 November 2003, the filing of his Appellant's Brief.^[6] He filed a Motion for Extension of another 45 days from 28 November 2003, or until 12 January 2004, within which to file the said brief. On 8 January 2004, he filed a Second Motion for Extension asking for an additional 45 days, which the CA granted with a warning that no further extension shall be allowed.^[7] Thus, petitioner had 45 days from 12 January 2004 or until 26 February 2004.

Despite the two extensions, petitioner Lagua still failed to file his appellant's brief. On 5 May 2004, the CA ordered him through counsel to show cause, within five days from receipt, why the appeal should not be dismissed pursuant to Section 8, Rule 124 of the Rules of Court. He again failed to submit his brief within the reglementary period and to comply with the Court's 5 May 2004 Resolution. Thus, on 1 September 2004, the CA issued a Resolution declaring the appeal abandoned and accordingly dismissed pursuant to the Rules.

On 14 October 2004, petitioner's counsel of record, Atty. Salvador Quimpo, manifested to the Court that he had already withdrawn as defense counsel for

petitioner, but that he had failed to secure the latter's conformity.^[8] The following day, petitioner himself filed a Motion for Reconsideration of the 1 September 2004 Resolution, requesting more time to secure the services of another counsel. On 20 October 2004, the Solicitor General, manifesting that accused-appellant's abandonment of his appeal rendered the judgment of conviction final and executory, moved for his immediate arrest and confinement at the New Bilibid Prison.^[9]

In its Resolution dated 9 February 2005, the CA stated that it had never received a Notice of Withdrawal from Atty. Quimpo, but nevertheless granted a 30-day period for petitioner and his new counsel to file a Notice of Appearance. Again, petitioner failed to comply. On 8 July 2005, the CA issued another Show Cause Order, directing him to explain within 10 days why he had not caused the appearance of his new counsel, and why the appeal should not be considered abandoned. Instead of filing a timely compliance, petitioner's new counsel, Atty. Emerson Barrientos filed a Notice of Appearance on 8 March 2005 or *almost a month* after the Show Cause Order.

On 17 August 2005, the CA filed a Resolution stating that in the interest of justice, the Notice of Appearance was considered sufficient compliance with the Order of 8 July 2005. It granted the Motion for Reconsideration, set aside the Order of Dismissal issued on 1 September 2004, and gave petitioner and his new counsel a non-extendible period of 30 days within which to file the appellant's brief.

Notwithstanding the new non-extendible period, petitioner again failed to seasonably file his brief, prompting the CA to issue the first assailed Resolution dated 25 November 2005, which, *for the second time*, declared his appeal abandoned and accordingly dismissed. Roused from inaction, he filed another Motion for Reconsideration with Motion to Admit Appellant's Brief on 19 December 2005, or *18 days after his counsel received the 25 November 2005 Resolution*.

In its second assailed Resolution issued on 17 May 2006, the CA denied petitioner's Motion for Reconsideration and ordered the Appellant's Brief to be expunged from the records, viz:

Indeed the present appeal has been dismissed twice by the Court because of accused-appellant's failure to file his brief. The present motion for reconsideration of the second dismissal of the appeal was even filed three (3) days beyond the reglementary period. Ineluctably, the dismissal of the present appeal has become final and accused-appellant has lost his right to appeal.

It bears stressing that accused-appellant cannot simply trifle with the rules of procedure on the pretext that his life and liberty are at stake. For appeal is a mere statutory privilege to be exercised in the manner and in accordance with the provisions of the law granting the privilege.^[10] x x x.

Petitioner comes to this Court alleging grave abuse of discretion on the part of the lower court in declaring the appeal abandoned, pointing to the negligence and errors of his counsel as the cause of the two-year delay in coming up with the brief. Petitioner reasons that there would be no prejudice to the People if his appeal is

reinstated, and that he has a good defense that can lead to his acquittal.

We dismiss the Petition.

The *certiorari* jurisdiction of the Supreme Court is rigorously streamlined, such that Rule 65 only admits cases based on the specific grounds provided therein. The Rule applies if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. The independent action for *certiorari* will lie only if grave abuse of discretion is alleged and proven to exist. Grave abuse of discretion is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.^[11]

In the present case, petitioner would have us strike down the Resolutions of the CA declaring his appeal as abandoned for purportedly being issued in grave abuse of discretion. Yet, far from committing the grievous error petitioner presents it to be, the CA merely exercised the authority expressly granted to it under Rule 124, which we quote below:

Sec. 8. Dismissal of appeal for abandonment or failure to prosecute. –
The appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this rule, except in case the appellant is represented by a counsel de oficio.

Petitioner was represented by private counsel (and not *counsel de oficio*) to whom the CA had granted multiple extensions: two for Atty. Quimpo; and two for Atty. Barrientos, whose Notice of Appearance was submitted *a month after* the Show Cause Order of 8 July 2005. As for Atty. Quimpo, he filed his Manifestation *more than a month* after the CA had first issued the dismissal. It was only because of the plea for compassion in petitioner's Motion for Reconsideration that the CA granted him another 30 days in order to secure the services of another lawyer. Again, petitioner failed to comply. Both he and the new counsel, Atty. Barrientos, also failed to comply with the second Show Cause Order.

Yet again, the CA allowed Atty. Barrientos' Notice of Appearance and considered it substantial compliance with the second Show Cause Order. Out of the CA's liberality, petitioner was given another 30 days to come up with the Appellant's Brief. This he failed to submit, prompting the CA, for the second and final time, to declare his appeal as abandoned. Even then, his Motion for Reconsideration with Motion to Admit Appellant's Brief was filed *18 days after his counsel received the CA Resolution*.

In his Petition, Laguna bewails the negligence and mishandling by his two previous counsels as the reason for the delay, which has lasted for more than two years. However, it is clear from the facts that despite the liberality and consideration afforded to him by the CA, he is by no means blameless. More importantly, his excuse cannot serve as a substitute for the jurisdictional requirements under Rule