

SECOND DIVISION

[G.R. NO. 170562, June 29, 2007]

ANGEL CELINO, SR., PETITIONER, VS. COURT OF APPEALS, CEBU CITY, HON. DELANO F. VILLARUZ, PRESIDING JUDGE, BRANCH 16, REGIONAL TRIAL COURT, CAPIZ, ROXAS CITY, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

CARPIO MORALES, J.:

This petition for *certiorari* under Rule 65 of the Rules of Court assails the Court of Appeals' Decision dated April 18, 2005^[1] affirming the trial court's denial of petitioner Angel Celino, Sr.'s Motion to Quash; and Resolution dated September 26, 2005^[2] denying petitioner's Motion for Reconsideration of the said Decision.

The following facts are not disputed:

Two separate informations were filed before the Regional Trial Court of Roxas City charging petitioner with violation of Section 2(a) of COMELEC Resolution No. 6446 (gun ban),^[3] and Section 1, Paragraph 2 of Republic Act No. (R.A.) 8294^[4] (illegal possession of firearm), as follows:

Criminal Case No. C-137-04

That on or about the 12th day of May, 2004, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and knowingly carry outside of his residence an armalite rifle colt M16 with serial number 3210606 with two (2) long magazines each loaded with thirty (30) live ammunitions of the same caliber during the election period - December 15, 2005 to June 9, 2004 - without first having obtained the proper authority in writing from the Commission on Elections, Manila, Philippines.

CONTRARY TO LAW. ^[5]

Criminal Case No. C-138-04

That on or about the 12th day of May, 2004, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and knowingly have in his possession and control one (1) armalite rifle colt M16 with serial number 3210606 with two (2) long magazines each loaded with thirty (30) live ammunitions of the same caliber without first having obtained the proper

license or necessary permit to possess the said firearm.

CONTRARY TO LAW.^[6]

Upon arraignment in Criminal Case No. C-138-04, petitioner pleaded not guilty to the gun ban violation charge.^[7]

Prior to his arraignment in Criminal Case No. C-137-04, petitioner filed a Motion to Quash^[8] contending that he "cannot be prosecuted for illegal possession of firearms x x x if he was also charged of having committed another crime of [*sic*] violating the Comelec gun ban under the same set of facts x x x."^[9]

By Order of July 29, 2004,^[10] the trial court denied the Motion to Quash on the basis of this Court's^[11] affirmation in *Margarejo v. Hon. Escoses*^[12] of therein respondent judge's denial of a similar motion to quash on the ground that "the other offense charged x x x is not one of those enumerated under R.A. 8294 x x x." ^[13] Petitioner's Motion for Reconsideration was likewise denied by September 22, 2004 Resolution,^[14] hence, petitioner filed a Petition for *Certiorari*^[15] before the Court of Appeals.

By Decision dated April 18, 2005,^[16] the appellate court affirmed the trial court's denial of the Motion to Quash. Petitioner's May 9, 2005 Motion for Reconsideration^[17] having been denied by Resolution of September 26, 2005,^[18] petitioner filed the present petition.

The petition fails.

Petitioner's remedy to challenge the appellate court's decision and resolution was to file a petition for review on certiorari under Rule 45 on or before October 20, 2005 or 15 days after he received a copy of the appellate court's resolution on October 5, 2005^[19] denying his motion for reconsideration. Instead, petitioner chose to file the present petition under Rule 65 only on December 2, 2005,^[20] a good 58 days after he received the said resolution.

Certiorari cannot be used as a substitute for lost appeal. *Certiorari* lies only when there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. Why the question being raised by petitioner, *i.e.*, whether the appellate court committed grave abuse of discretion, could not have been raised on appeal, no reason therefor has been advanced.^[21]

While this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a petition for *certiorari* as having been filed under Rule 45, especially if filed within the reglementary period under said Rule, it finds nothing in the present case to warrant a liberal application of the Rules, no justification having been proffered, as just stated, why the petition was filed beyond the reglementary period,^[22] especially considering that it is substantially just a replication of the petition earlier filed before the appellate court.

Technicality aside, the petition fails just the same.

The relevant provision of R.A. 8294 reads:

SECTION 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

"SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* " x x x.

"The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

"If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

"If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted coup d'etat, such violation shall be absorbed as an element of the crime of rebellion, or insurrection, sedition, or attempted coup d'etat.

x x x x

(Underscoring supplied)

The crux of the controversy lies in the interpretation of the underscored proviso. Petitioner, citing *Agote v. Lorenzo*,^[23] *People v. Ladjaalam*,^[24] and other similar cases,^[25] contends that the mere filing of an information for gun ban violation against him necessarily bars his prosecution for illegal possession of firearm. The Solicitor General contends otherwise on the basis of *Margarejo v. Hon. Escoses* ^[26] and *People v. Valdez*.^[27]

In *Agote*,^[28] this Court affirmed the accused's conviction for gun ban violation but exonerated him of the illegal possession of firearm charge because it "cannot but set aside petitioner's conviction in Criminal Case No. 96-149820 for illegal possession of firearm since another crime was committed at the same time, i.e., violation of COMELEC Resolution No. 2826 or the Gun Ban."^[29] *Agote* is based on *Ladjaalam*^[30] where this Court held:

x x x A simple reading [of RA 8294] shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of