

SECOND DIVISION

[G.R. NO. 147832, December 06, 2006]

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. DANILO P. GABRIEL, RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari assailing the Resolution^[1] of the Court of Appeals (Special Third Division) dated April 10, 2001 in CA-G.R. SP No. 63552.

In two (2) separate Informations dated January 16, 1999, the Office of the City Prosecutor of Olongapo City charged Danilo P. Gabriel, respondent, with violation of the Dangerous Drugs Act. The first Information, docketed as Criminal Case No. 27-99, reads:

That on or about the fifteenth (15th) day of January 1999, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully, and knowingly sell, deliver and give away to another person Methamphetamine Hydrochloride, otherwise known as "Shabu", which is a regulated drug, approximately weighing Four Grams and Eight Thousand Five Hundred Thirty-Five Ten Thousandths (4.8535) of a gram.

CONTRARY TO LAW.

The other Information, docketed as Criminal Case No. 28-99, is quoted as follows:

That on or about the fifteen (15th) day of January 1999, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without the corresponding license or prescription, did then and there willfully, unlawfully and knowingly have in his person, possession and control Sixty-two Grams and Nine Thousand Seven Hundred Ninety One Ten Thousandths (62.9791) of a gram of methamphetamine hydrochloride, otherwise known as "Shabu", which is a regulated drug.

CONTRARY TO LAW.

Both cases were raffled off and consolidated in Branch 74 of the Regional Trial Court (RTC), Olongapo City, then presided by Judge Fatima G. Asdala. Assistant City Prosecutor Roel G. Samonte was assigned to prosecute the cases.

On July 19, 2000, Judge Asdala wrote the Office of the City Prosecutor of Olongapo City asking for the immediate relief of Assistant City Prosecutor Samonte for his

"poor performance which has disrupted and adversely affected the smooth and orderly proceedings in the criminal cases." She requested that Prosecutor Raymond C. Viray be assigned to prosecute the cases.

On July 20, 2000, Officer-in-Charge (OIC) Armando C. Velasco of the Office of the City Prosecutor of Olongapo City issued Memorandum No. 45, Series 2000 **relieving** Assistant City Prosecutor Samonte as trial prosecutor of Branch 74.

On July 26, 2000, when Criminal Cases Nos. 27-99 and 28-99 were called for hearing, Judge Asdala ordered the provisional dismissal of the cases for failure to prosecute as no prosecutor appeared.

On August 8, 2000, OIC Velasco issued Memorandum Order No. 53, Series 2000 designating Assistant City Prosecutor Ildefonso F. Recitis as prosecutor of Branch 74.

On August 17, 2000, Assistant City Prosecutor Samonte filed a Motion for Reconsideration of the Order dated July 26, 2000 dismissing the cases. He alleged that the Office of the City Prosecutor of Olongapo City could not assign Prosecutor Viray to Branch 74 since he is the prosecutor in a Family Court; and that Assistant City Prosecutor Recitis, having been assigned to Branch 74 effective August 17, 2000, can now prosecute the cases.

On November 9, 2000, Judge Reynaldo V. Roura, the pairing judge of Judge Asdala in Branch 74, denied the motion for reconsideration.

On January 3, 2001, the Office of the Solicitor General (OSG) received a letter dated November 24, 2000 from the Office of the City Prosecutor, Olongapo City, recommending the filing of a petition for certiorari with the Court of Appeals in order to challenge the RTC Order dated November 9, 2000 dismissing the cases.

On March 5, 2001, the OSG filed with the Court of Appeals the corresponding petition for certiorari, docketed as CA-G.R. SP No. 63552.

On April 10, 2001, the Court of Appeals dismissed the petition on the ground that it was "time-barred." It held that the 60-day period within which to file the petition should be counted from November 22, 2000, the date the Office of the City Prosecutor of Olongapo City received a copy of the assailed Order, not from January 3, 2001, the date of receipt by the OSG of the same Order.

The only issue for our determination is whether the filing by the OSG of the petition for certiorari with the Court of Appeals is within the reglementary period.

Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended, reads in part:

SEC. 4. *When and where petition filed.* – The petition (for certiorari) may be filed not later than sixty (60) days from notice of the judgment, order, or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

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