

THIRD DIVISION

[G.R. No. 147070, February 17, 2004]

SANTIAGO TAMAYO ALIAS BATOG, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

CORONA, J.:

In this petition for review, petitioner Santiago Tamayo alias Batog prays that the resolutions^[1] dated November 10, 2000 and January 31, 2001 of the Court of Appeals be reversed and set aside, and that the appellate court be directed to reinstate and give due course to his appeal.

On December 15, 1998, petitioner was convicted by the Regional Trial Court, Branch 57, San Carlos City of arson punishable under Art. 321, no. 1 (b) of the Revised Penal Code. He was sentenced to suffer imprisonment of six years and one day of *prision mayor* as minimum to 12 years and one day of *reclusion temporal* as maximum. Petitioner appealed his conviction to the Court of Appeals by filing a notice of appeal. On June 30, 1999, the appellate court required him to file an appellant's brief. Petitioner, however, failed to file the required brief despite the lapse of one year. This prompted the Court of Appeals to issue the assailed resolution dated November 10, 2000 dismissing his appeal. The Court of Appeals treated petitioner's failure to file the appellant's brief as an abandonment of his appeal, pursuant to Section 8, Rule 124 of the Revised Rules on Criminal Procedure.

Petitioner moved for reconsideration, praying that he be given ample time to prepare his appellant's brief. He averred that he was completely unaware of the non-filing of the brief by his former counsel who withdrew from the case without his knowledge and consent. On January 31, 2002, the Court of Appeals issued another resolution denying reconsideration on the ground that

xxx as of 29 January 2001 or forty-one (41) days after the filing of this Motion, accused Santiago Tamayo still failed to submit his Appellant's Brief. Accordingly, the Court viewed this non-compliance as an abandonment of his appeal.

WHEREFORE, for failure to file the mandatory Appellant's Brief within the reglementary period, the present appeal is hereby DISMISSED.^[2]

Hence, this petition.

Petitioner maintains that he should not be made to bear the adverse consequences of his former counsel's negligence. He claims that his former counsel abandoned his case without informing him and that it was only when his appeal was dismissed by the Court of Appeals that he learned of his former counsel's withdrawal from the

case.

He further contends that the exercise by the appellate court of the power to dismiss the appeal was not in accordance with the tenets of justice and fair play as he was denied his right to be heard on appeal.

He insists that the Court of Appeals should have excused the procedural lapse since strict compliance with the rules meant sacrificing justice for technicality. Considering that no material injury was suffered by the People of the Philippines by reason of the delay in the filing of his brief, the appellate court should have allowed him to file it even beyond the reglementary period.

In his comment, the Solicitor General argues that the Court of Appeals acted correctly in issuing the assailed resolutions since: (a) the delay in filing the brief was not merely a matter of a few days or weeks but of more than one year; (b) for more than a year, petitioner negligently failed to exert effort to confer with his counsel about the progress of his appeal; (c) knowing the gravity of the offense and the severity of the penalty imposed on him, petitioner should have been diligent enough to communicate with his counsel concerning his case and (d) even though he filed a motion for reconsideration of the dismissal of his appeal, prudence dictated that, without waiting for the resolution of his motion, he should have filed his brief within a reasonable time. Clearly, petitioner failed to do what was reasonable under the circumstances, hence his appeal was rightly dismissed for the second time.

Petitioner, in his reply, retorts that he could not be expected to presume that the motion for reconsideration would be granted. His primordial concern then was for his appeal to be reinstated. Thus, before filing the requisite brief, he still had to wait for the order of the Court of Appeals reinstating the appeal.

We grant the petition.

Except for criminal cases where the penalty imposed is *reclusion perpetua* or death, an appeal from the judgment of the lower court is not a matter of right but of sound judicial discretion. The circulars of this Court prescribing technical and other procedural requirements are meant to promptly dispose of unmeritorious petitions that clog the docket and waste the time of the courts. These technical and procedural rules, however, are intended to ensure, not suppress, substantial justice. A deviation from their rigid enforcement may thus be allowed to attain their prime objective for, after all, the dispensation of justice is the core reason for the existence of courts.^[3]

It must be noted that, in the case at bar, it is not disputed that petitioner timely filed his notice of appeal and that the appellate court acquired jurisdiction over the case. Petitioner merely failed to submit his appellant's brief within the period provided by the rules. A distinction should be made between the failure to file a notice of appeal within the reglementary period and the failure to file a brief within the period granted by the appellate court. The former results in the failure of the appellate court to acquire jurisdiction over the appealed decision resulting in its becoming final and executory upon failure of the appellant to move for reconsideration. The latter simply results in the abandonment of the appeal which can lead to its dismissal upon failure to move for its reconsideration.^[4]