

4 Phil. 90

[G.R. No. 1896. December 23, 1904]

The United States, plaintiff and appellee, vs. Pedro Trincio, defendant and appellant.

D E C I S I O N

JOHNSON, J.:

This case came before the court on a motion by the Solicitor-General to dismiss the appeal for the reason that it had not been perfected within the time prescribed by section 47 of General Orders, No. 58.

Section 47 of General Orders, No. 58, provides: "An appeal must be taken within fifteen days from the rendition of the judgment or order appealed from."

The judgment appealed from was rendered by the Court of First Instance of the city of Manila on the 17th day of August, 1903.

On the 10th day of August, 1903, the defendant and appellant presented a motion for a new trial.

On the 2d day of October, 1903: the judge who rendered the sentence in said cause denied the motion for a new trial, for the reason that the motion had not complied with the requirements of section 42 of General Orders, No. 58.

On the 5th day of October, 1903, the defendant and appellant filed with the said Court of First Instance his notice of appeal. The judgment was rendered on the 17th day of August, 1903. The appeal was taken on the 5th day of October, 1903. More than fifteen days had elapsed from the rendition of the judgment appealed from and the time the appeal was taken.

This court has decided in two different cases (United States vs.

Flemister, 1 Phil. Rep., 317; United States vs. Perez, 1 Phil. Rep., 322) that the pendency of a motion for a new trial does not extend the time for taking an appeal beyond the fifteen days after the judgment provided for in the above-quoted section 47.

By the said decisions in the causes of the United States vs. Flemister and the United States vs. Perez, the following rules are established:

- (1) That appeals in criminal cases will not be allowed after the lapse of fifteen days from the rendition of the judgment Or order appealed from.
- (2) That the pendency of a motion for a new trial does not extend the time to perfect an appeal.
- (3) That the motion for a new trial fails, ipso facto, if the judge neglects or fails to decide the same within the said fifteen days.

The motion to dismiss said appeal is hereby granted.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.
