

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. DR. BENJAMIN G. GONZAGA, ACCUSED-APPELLANT.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

On December 12, 2013, a Notice[1] to file Brief within thirty (30) days from receipt of notice, was sent to Atty. Pacifico M. Maghari, III, counsel for accused-appellant. The Notice was received[2] on January 14, 2014.

On March 10, 2014, accused-appellant filed a Motion for Extension of Time[3], praying for an additional time of thirty (30) days from February 13, 2014 or until March 15, 2014, within which to file his Appellant's Brief.

On April 3, 2014, accused-appellant filed an Urgent Motion for Additional Time[4], praying for an extension of thirty (30) days from March 17, 2014 or until April 16, 2014, within which to file his Appellant's Brief.

On May 6, 2014, accused-appellant filed his Appellant's Brief[5], through his counsel.

On June 9, 2014, plaintiff-appellee filed a Motion for Extension[6], praying for an extension of ninety (90) days from May 28, 2014 or until August 26, 2014, within which to file its Appellee's Brief.

On the same date, counsel for the private complainant Atty. Jesus V. Hinlo, Jr. filed a Motion to Dismiss Appeal[7].

On June 17, 2014, private complainant filed an Opposition to the Appellant's Comment dated May 23, 2014[8].

Subsequently, on June 23, 2014, accused-appellant filed a Motion to Expunge[9] and Comment[10] (on Private Complainant's Motion to Dismiss Appeal dated May 19, 2014).

In this case, the Notice to file Brief was sent to the accused-appellant on December 12, 2013 and received by the accused-appellant on January 14, 2014[11]. Thus, the accused-appellant has until February 13, 2014 to file his appellant's brief. But instead of filing on the given date, the accused-appellant filed two (2) Motions for Extension on March 10, 2014 and April 3, 2014, which were far beyond the reglementary period.

A counsel is bound to protect his client's interest to the best of his ability and with utmost diligence[12]. Failure to file brief within a reglementary period constitutes inexcusable negligence, more so if the delay results in the dismissal of the appeal. Unfortunately for appellant, he is bound by the negligence of his counsel.

The Supreme Court is very instructive with respect to motions for extension. As held in the case of *Bergonia v. Herrera*[13]:

Section 12 of Rule 44 of the Rules of Court provides:

Sec. 12. Extension of time for the filing of a briefs. ---

Extension of time for the filing of briefs will not be allowed, except for good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended.(emphasis supplied)

From time to time, a request for extension becomes necessary when an advocate needs more time to study the

client's position. Generally, such request is addressed to the sound discretion of the court. Lawyers, who, for one reason or another, decide to dispense with the filing of the required pleading, should promptly manifest this intent to the court. It is necessary for them to do so in order to prevent delay in the disposition of the case. Those who file motions for extension in bad faith misuse the legal process, obstruct justice, and thus become liable to disciplinary action.

Section 3, Rule 124 of the Revised Rules of Court provides:

Section 3. When brief for the appellant to be filed. - Within thirty (30) days from receipt by the appellant or his counsel of the notice from the clerk of Court of the Court of Appeals that the evidence, oral and documentary, is already attached to the record, the appellant shall file seven (7) copies of his brief with the clerk of court which shall be accompanied by proof of service of two (2) copies thereof upon the appellee. (emphasis supplied)

Likewise, Section 1, Rule 50, Rules of Court, provides:

Section 1. Grounds for dismissal of appeal. --- An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time prescribed by these Rules;

WHEREFORE, the appeal is DISMISSED for failure to file the Appellant's Brief within the reglementary period.

The Opposition filed by private complainant and the Motion to Expunge and Comment filed by accused-appellant are NOTED.

SO ORDERED.

Delos Santos, and Lopez, JJ., concur.

[1] Rollo, page 28.

[2] As shown on the Registry Return Card, rollo, dorsal portion of page 28.

[3] Rollo, page 31.

[4] Rollo, pages 33-35.

[5] Rollo, pages 36-55.

[6] Rollo, page 81.

[7] Rollo, page 85-86.

[8] Rollo, pages 89-91.

[9] Rollo, pages 96-99.

[10] Rollo, pages 100-102.

[11] Supra no. 2.

[12] Barbuco v. Atty. Beltran, A.C. No. 5092, 11 August 2004, p. 4.

[13] 446 Phil. 1, 6-7 (2003) cited in *Lumbre y Sarita, et. al., v. Court of Appeals, et. al.*, G.R. No. 160717, July 23, 2008.

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