

BERNARDINO MARCELINO, PETITIONER, VS. THE HON. FERNANDO CRUZ, JR., AS PRESIDING JUDGE OF BRANCH XII OF THE COURT OF FIRST INSTANCE OF RIZAL, PEOPLE OF THE PHILIPPINES, AND THE P...

G.R. No. L-42428. March 18, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

A petition for prohibition and writ of habeas corpus to enjoin respondent Judge Fernando Cruz, Jr. from promulgating his decision in Criminal Case No. C-5910, entitled "People of the Philippines versus Bernardino Marcelino," and for release from detention of petitioner, the accused in said case, on the ground of loss of jurisdiction of respondent trial court over the case for failure to decide the same within the period of ninety (90) days from submission thereof.

Petitioner was charged with the crime of rape before the Court of First Instance of Rizal, Branch XII. Trial was conducted and the same was concluded when the accused rested his case on August 4, 1975. On the same date, however, the attorneys for both parties moved for time within which to submit their respective memoranda. The trial court granted the motion as follows:

"Upon joint motion, the parties are given thirty [30] days to submit their respective memoranda, simultaneously, and thereafter the case shall be deemed submitted for decision of the Court."

Counsel for petitioner submitted his memorandum in due time, but no memorandum was filed by the People.

On November 28, 1975, respondent judge filed with the Deputy Clerk of Court his decision in said case for promulgation. The decision was also dated November 28, 1975.[1]

A certification dated January 26, 1976 was executed by Postmaster Jesse A. Santos of the Grace Park Post Office[2] to the effect that registered letters Nos. 011980 and 011981, addressed to Marietta Ferrer of 9-E Mango Road, Potrero, Malabon, Rizal, the complaining witness, and Atty. Angel P. Purisima of 414 Shurdut Bldg., Intramuros, Manila, counsel for the accused, respectively, were posted in said office on December 4, 1975. These notices were received by the respective addressees on December 8 and 9, 1975.[3]

Similar notices were sent to the Provincial Fiscal of Pasig and to the Provincial Warden of Pasig, Rizal, who both received them on December 2, 1975.[4]

On the date set for promulgation of the decision, counsel for accused moved for postponement, raising for the first time the alleged loss of jurisdiction of the trial court for failure to decide the case within 90 days from submission thereof for decision. Acceding to counsel's request that he be given time to consider the proper remedial measure to take, the respondent judge reset the promulgation of the decision to January 19, 1976 at 8:30 A.M.

On January 19, 1976, counsel for petitioner moved anew for the resetting of the promulgation of decision.

Granting the motion, respondent judge rescheduled the promulgation to January 26, 1976.

Meanwhile, on January 12, 1976, counsel for the accused filed before Us the present petition. On January 16, 1976, this Court issued an Order temporarily restraining respondent judge from promulgating the decision in Criminal Case No. C-5910.

Petitioner espouses the thesis that the three-month period prescribed by Section 11[1] of Article X of the 1973 Constitution, being a constitutional directive, is mandatory in character and that non-observance thereof results in the loss of jurisdiction of the court over the unresolved case.

We disagree. Undisputed is the fact that on November 28, 1975, or eighty-five [85] days from September 4, 1975 the date the case was deemed submitted for decision, respondent judge filed with the deputy clerk of court the decision in Criminal Case No. C-5910. He had thus veritably rendered his decision on said case within the three-month period prescribed by the Constitution.

In *Comia v. Nicolas*[5] *Ago, v. Court of Appeals*[6] and *Balquidra v. Court of First Instance*[7] this Court ruled that the rendition of the judgment in trial courts refers to the filing of the signed decision with the clerk of Court. There is no doubt that the constitutional provision cited by petitioner refers to the rendition of judgment and not to the promulgation thereof. Thus, it is this date that should be considered in determining whether or not respondent judge had resolved the case within the allotted period. Indeed, the date of promulgation of a decision could not serve as the reckoning date because the same necessarily comes at a later date, considering that notices have to be sent to the accused as well as to the other parties involved, an event which is beyond the control of the judge. As pointed out in *People v. Court of Appeals*[8] the promulgation of a judgment in the trial court does not necessarily coincide with the date of its delivery by the judge to the clerk of court.

Section 11[1]. Article X of the New Constitution provides in full, to wit:

"SEC. 11[1]. Upon the effectivity of this Constitution, the maximum period within which a case or matter shall be decided or resolved from the date of its submission, shall be eighteen months for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all inferior collegiate courts, and three months for all other inferior courts."

To date, no authoritative interpretation of the above-quoted provision has been rendered by this Court. Thus, in approaching this novel question, We now tread upon what Mr. Cooley characterizes as "very dangerous ground when they [referring to the courts] venture to apply rules which distinguish directory and mandatory statutes to the provisions of a constitution." [9]

The established rule is that "constitutional provisions are to be construed as mandatory, unless by express provision or by necessary implication, a different intention is manifest." [10] "The difference between a mandatory and a directory provision is often determined on grounds of expediency, the reason being that less injury results to the general public by disregarding than by enforcing the letter of the law." [11]

In *Trapp v. McCormick*, [12] a case calling for the interpretation of a statute containing a limitation of thirty [30] days within which a decree may be entered without the consent of counsel, it was held that "the statutory provisions which may be thus departed from with impunity, without affecting the validity of statutory proceedings, are usually those which relate to the mode or time of doing that which is essential to effect the aim and purpose of the Legislature or some incident of the essential act." Thus, in said case, the statute under examination was construed merely to be directory.

On this view, authorities are one in saying that:

"Statutes requiring the rendition of judgment forthwith or immediately after the trial or verdict have been held by some courts to be merely directory so that non-compliance with them does not invalidate the judgment, on the theory that if the statute had intended such result it would clearly have indicated it." [American Tupe Founders Co. v. Justice's Court, 133 Cal. 819, 65 Pac. 742; Heillen v. Phillips, 88 Cal. 557, 26 Pac. 366; Drake v. Bagley, 69 Mo. App. 39; State v. Davis, 194 Mo. 585, 5 Ann. Cas. 1000, 4 L.R.A. (N.S.) 1023, 92 S.W. 484; Wissman v. Meagher 115 Mo. App. 82, 91 S.W. 448; Pohle v. Dickmann, 67 Mo. App. 381; Herwick v. Koken Barber Supply Co., 61 Mo. App. 454].

Such construction applies equally to the constitutional provision under consideration. In *Mikell v. School Dis. of Philadelphia*,^[13] it was ruled that "the legal distinction between directory and mandatory laws is applicable to fundamental as it is to statutory laws."

To Our mind, the phraseology of the provision in question indicates that it falls within the exception rather than the general rule. By the phrase "unless reduced by the Supreme Court," it is evident that the period prescribed therein is subject to modification by this Court in accordance with its prerogative under Section 5[5] of Article X of the New Constitution to "promulgate rules concerning pleading, practice and procedure in all courts. . .". And there can be no doubt that said provision, having been incorporated for reasons of expediency, relates merely to matters of procedure. *Albermarle Oil & Gas Co. v. Morris*^[14] declares that constitutional provisions are directory, and not mandatory, where they refer to matters merely procedural.

In practice, We have assumed a liberal stand with respect to this provision. This Court had at various times, upon proper application and for meritorious reasons, allowed judges of inferior courts additional time beyond the three-month period within which to decide cases submitted to them. The reason is that a departure from said provision would result in less injury to the general public than would its strict application. To hold that non-compliance by the courts with the aforesaid provision would result in loss of jurisdiction, would make the courts, through which conflicts are resolved, the very instruments to foster unresolved causes by reason merely of having failed to render a decision within the allotted term. Such an absurd situation could not have been intended by the framers of our fundamental law.

As foreseen by Mr. Henry Campbell Black in his *Construction and Interpretation of the Laws*,^[15] the constitutional provision in question should be held merely as directory. "Thus, where the contrary construction would lead to absurd, impossible or mischievous consequences, it should not be followed."

One last point. Notwithstanding Our conclusion that courts are not divested of their jurisdiction for failure to decide a case within the ninety-day period, We here emphasize the rule, for the guidance of the judges manning our courts, that cases pending before their salas must be decided within the afore-mentioned period. Failure to observe said rule constitutes a ground for administrative sanction against the defaulting judge. In fact, a certificate to this effect is required before judges are allowed to draw their salaries.

WHEREFORE, the petition is hereby dismissed; and the Restraining Order dated January 16, 1976 issued by this Court is lifted. Since respondent Judge Fernando Cruz, Jr. is already deceased, his successor is hereby ordered to decide Criminal Case No. C-5910 on the basis of the record thereof within ninety [90] days from the time the case is raffled to him.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero and De Castro, JJ., concur.
Aquino, J., is on leave.

- [1] Annex 5, Respondent's Comment.
[2] Annex 4, Respondent's Comment.
[3] Annexes 2, 2-B, Respondent's Comment.
[4] Annexes 2-a and 3-a, Respondent's Comment.

[5] 29 SCRA 492.

[6] 6 SCRA 530.

[7] 83 SCRA 122.

- [8] 99 Phil. 786.
[9] I Cooley, Constitutional Limitations, 8th Ed., p. 159.

[10] 16 C.J.S. 174.

- [11] *Huffines v. Gold*, 154 Tenn. 583, at page 588, 288 S.W. 353, page 354; *Richardson v. Young*, 122 Tenn. 471, 527, 530; 125 S.W. 664; *Covington's Case*, State ex rel Atty. Gen. V. Covington, 29 Ohio St., 102, 117.
[12] 130 S.W. 2d 122, 125, 175 Ten.
[13] 58 A. 2d 339, 359 Pa. 113, 4 A.L.R. 2d 692.

[14] 121, S.E. 60, 62.

- [15] Sec. 13, p. 28.

CONCURRING

ABAD SANTOS, J.:

I concur and I wish to add the following observations:

The petitioner seeks release from detention on the ground of loss of jurisdiction of the trial court allegedly because its judge failed to decide his case within 90 days from the date of its submission. Section 11(1), Art. X of the Constitution is invoked.

The main opinion states that the 90-day period was not exceeded in this case and I agree. But exceeded or not, a decision rendered by an inferior court outside of the 90-day period is not void for loss of jurisdiction. To hold otherwise is to make the administration of justice depend heavily on the frailties of a human judge. A decision rendered beyond the 90-day period, I submit, is valid and the only consequence is to subject the erring judge to administrative action. ". . . failure to comply with the injunction for judges to decide their cases within 90 days from submission merely deprives them of their right to collect their salaries or to apply for leave (section 5, Judiciary Act of 1948; section 129, Revised Administrative Code) but does not deprive them of jurisdiction to act in the causes pending before them." (*Dimson vs. Elepano*, 99 Phil. 733, 737 [1956].)

The judge who wrote the questioned decision has died. It cannot now be promulgated. "It is well-settled that, to be binding, a judgment must be duly signed and promulgated during the incumbency of the judge whose signature

appears thereon." (People vs. So, July 30, 1957, No. L-8732, citing Lino Luna v. Rodriguez, 37 Phil. 186; Garchitorena v. Crescini, 37 Phil. 675; Barredo v. The Commission on Elections, 45 Off. Gaz. 4457; People v. Court of Appeals, G.R. No. L-9111-9113.) For this reason, petitioner's case has to be decided by another judge.

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