

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONRADO DE LEON Y VILLARENTE, ACCUSED-APPELLANT,
EMMANUEL M. BASA, RESPONDENT.**

G.R. No. L-38798. February 25, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

It was the failure of counsel de parte, Attorney Emmanuel M. Basa, to file appellant's brief within the period which expired on October 9, 1974, that led to a resolution of this Court requiring him to explain within ten days from notice why the appeal should not be dismissed for such failure. No word being received from him within the allotted period, this Court, on December 20, 1974, required him to show cause why no disciplinary action should be taken against him and to file the brief both within thirty days from notice. On January 20, 1975 came a pleading where he sought to explain such failure and to withdraw the appeal. It is worded thus: "1. That counsel received on December 27, 1974, a copy of the Resolution of the Second Division of this Honorable Court, resolving (a) to require counsel to show cause why disciplinary action should not be taken against him for failure to file the necessary brief, and (b) to file said brief, both within thirty days from notice of the resolution; 2: That counsel was not able to file the brief because sometime in August, 1974, appellant's father, Mr. Alfredo De Leon, borrowed from counsel the records of the case, including the transcript of stenographic notes and up to the present has not returned the same; that when Mr. Alfredo De Leon borrowed the records, he manifested that the accused, who is detained at the New Bilibid Prisons in Muntinlupa, Rizal, expressed his desire to withdraw his appeal so that he would be eligible for parole; that counsel told Mr. Alfredo De Leon to be sure and ask his son again whether he desires to withdraw his appeal; 3. That when counsel received the resolution of this Honorable Court informing him to file the brief, counsel went to the house of Mr. Alfredo De Leon several times, but said Mr. Alfredo De Leon was always out, being a jeepney driver and plying his route; 4, That at present, counsel was able to talk personally to Conrado de Leon, accused-appellant, and said accused manifested his desire to withdraw his appeal so that he would be eligible for parole, and having been convinced that the Decision of the trial court is in accordance with law and the evidence presented during the trial; 5. That counsel begs the indulgence and pardon of this Honorable Court in incurring delay in filing his explanation and the withdrawal of appeal, but if Mr. Alfredo De Leon did not borrow the transcript of stenographic notes and other records of the case, counsel would have been able to submit the necessary brief even in mimeographed form, if the counsel really wishes to pursue his appeal; 6. That attached to this explanation is the Affidavit of Mr. Alfredo de Leon to verify the allegations made by herein counsel, and the withdrawal of appeal signed by the accused." [1] In the notice of withdrawal of appeal signed by the accused, there is a statement to the effect that he is convinced of the correctness of the decision rendered being in accordance with the law and the evidence, and that furthermore, he is withdrawing the appeal so that he will be eligible for parole.

While the explanation on its face appears to be plausible, it does not entirely exculpate counsel de parte for his failure to file the brief on time as well as for his failure to give the explanation within the period which expired on

November 4, 1974. It cannot be said that his conduct was in accordance with the standard of diligence expected of members of the bar. The mere fact that the transcript of stenographic notes was in the possession of appellant's father was not a valid excuse. The records of the case in this Court could have been examined by him. Moreover, he could have personally gone to Muntinlupa, Rizal to ascertain whether or not appellant would really want to withdraw his appeal rather than leave it to the father. If this Court is inclined to view with leniency such lapse, it is only due to the fact that appellant had indicated in a categorical manner that he was no longer interested in pursuing his appeal.

WHEREFORE, this Court grants the plea to have the appeal withdrawn and admonishes Attorney Emmanuel M. Basa to be more attentive to his duty in the future. Let the copy of this resolution be entered on his record.

Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Explanation and Withdrawal of Appeal, 1-2,

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