

RENATO C. ROBLES, PETITIONER, VS. HON. JUDGE NESTOR V. GAPUZAN, PRESIDING JUDGE, METROPOLITAN TRIAL COURT BRANCH 75, MARIKINA CITY, AND JCINSP. GREGORIO C. ACACIO, RN, OFFICER-I...

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

Before this Court is a Petition for Habeas Corpus and Certiorari[1] seeking to set aside the Order dated 9 March 2015 issued by the Metropolitan Trial Court of Marikina City, Branch 75 in Criminal Case No. 11-58887 which denied petitioner's motion for bail and immediate release.

The facts of the case, as alleged in the petition, are as follows:

Petitioner Renato C. Robles (petitioner) was indicted for violating Batas Pambansa Blg. 22 for issuing an unfunded check in the amount of Php1,428,000.00. Subsequently, after trial, petitioner was convicted of said crime by the Metropolitan Trial Court of Marikina City, Branch 75 (trial court) on 29 January 2012. The fallo of the Decision of the trial court reads:

“WHEREFORE, this Court finds accused Renato Robles GUILTY beyond reasonable doubt of the crime of Violation of Batas Pambansa Blg. 22 and hereby sentences him to pay a fine in the amount of Two Hundred Thousand Pesos (P 200,000.00) with subsidiary imprisonment in case of insolvency and to indemnify the private complainant in the amount of P 900,000.00 representing the loan which he obtained from the private complainant with interest at the rate of twelve percent (12%) per annum (Central Bank Circular No. 416, July 29, 1974) computed from the date of the filing of the complaint until June 30, 2013 and with interest at the rate of six percent (6%) per annum starting July 1, 2013, until fully paid (BSP Circular No. 799, July 1, 2013).

SO ORDERED.”[2]

However at promulgation of the the above Decision, petitioner and his counsel failed to appear. As a result, the trial court issued a warrant of arrest against petitioner who was subsequently arrested and thereafter detained in Marikina City Jail.

Afterwards, petitioner through counsel filed an Omnibus Motion for Leave of Court to Avail of Remedies with Urgent Motion for Immediate Release of Accused from Confinement Pending Application for Bail and Motion for Bail. On said Omnibus Motion, petitioner averred that his failure to attend the promulgation of the Decision was precipitated by a mild heart attack he suffered before the scheduled hearing. However, in the hearing of said Omnibus Motion, the doctor who issued a medical certification in favor of petitioner, refuted having examined petitioner on the date indicated in the medical certification.[3] Worse, the doctor testified that the last time he made a follow check-up on petitioner was in 2014. Consequently, the trial court denied petitioner's Motion for Leave of Court to Avail of Remedies with Urgent Motion for Immediate Release of Accused from Confinement Pending Application for Bail in its 09 March 2015 Order (Assailed Order). With respect to the Motion for Bail, the trial court likewise denied the same in the same Assailed Order, explaining that the purpose of bail is to

relieve the accused of the rigors of imprisonment during trial but is not available after conviction. The dispositive portion of the Assailed Order reads:

“WHEREFORE, premises considered, the “Omnibus Motion for Leave of Court to Avail of Remedies with Urgent Motion for Immediate Release of Accused from Confinement Pending Application for Bail and Motion for Bail” filed by the accused through counsel on February 5, 2015, is hereby DENIED for lack of merit.”[4]

Aggrieved, petitioner files this instant Petition for Habeas Corpus and Certiorari. In support thereof, petitioner raises the following issues:

I.

WHETHER THERE WAS ILLEGAL AND UNLAWFUL DEPRIVATION OF LIBERTY OF THE PETITIONER, IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS, UNDER AN ILLEGAL AND UNLAWFUL WARRANT OF ARREST AND ORDER DATED 09 MARCH 2015.

II.

WHETHER THE PETITIONER SHOULD BE IMMEDIATELY RELEASED FROM DETENTION.

III.

WHETHER THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN DENYING THE PETITIONER'S MOTION FOR BAIL OR IMMEDIATE RELEASE.

Petitioner thus contends that he is unlawfully deprived of liberty under an illegal order and warrant of arrest considering that his penalty for violating B.P. Blg. 22 are only fine and indemnification. Petitioner further argues that the warrant of arrest should only be issued to compel his appearance and the same should be lifted upon his appearance or arrest as he is still entitled to the remedy of appeal. On that account, petitioner anticipates that he will suffer another heart attack if he is not promptly released. Petitioner hence prays the reversal of the assailed Order and his immediate release from detention.

We deny both petitions.

Anent the Petition for Habeas Corpus, it is established that the writ of habeas corpus extends to all cases of illegal confinement or detention by which any person is deprived of his liberty or by which the rightful custody of a person is being withheld from the one entitled thereto. It is issued when one is either deprived of liberty or is wrongfully being prevented from exercising legal custody over another person. Thus, it contemplates two instances: (1) deprivation of a person's liberty either through illegal confinement or through detention and (2) withholding of the custody of any person from someone entitled to such custody.[5]

The object of the writ of habeas corpus is to inquire into the legality of the detention, and, if the detention is found to be illegal, to require the release of the detainee. Equally well-settled however, is that the writ will not issue where the person in whose behalf the writ is sought is in the custody of an officer under process issued by a court or judge with jurisdiction or by virtue of a judgment or order of a court of record.[6] Accordingly, Section 4, Rule 102 of the Rules of Court explicitly states that:

“Section 4. When writ not allowed or discharge authorized. — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted

of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.” (emphasis supplied)

The above-quoted provision of section 4 of Rule 102, is in conformity with the well-established rule that a petition for a writ of habeas corpus to secure the discharge of one restrained of his liberty by virtue of a judgment, is a collateral attack upon the said judgment; and the writ lies only where the judgment attacked is absolutely void, because the court that rendered it had no jurisdiction; and it does not lie where it is merely voidable by reason of errors, omissions, irregularities, or defects in the judgment.[7]

Here, petitioner was validly arrested for his failure to attend the promulgation of the Decision in his criminal case. Verily, the trial court issued a warrant of arrest pursuant to Section 6, Rule 120 of the Rules of Court, thus:

“Sec 6. Promulgation of judgment. - xxx

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.” (emphasis supplied)

It is worthy to note that the above rule does not distinguish if the penalty imposed upon the accused involves imprisonment or not. *Ubi lex non distinguit nec nos distinguere debemos*. Hence, petitioner cannot claim that since his penalty only comprises of fine and indemnification, he is already exempt from arrest. To be sure, the Supreme Court in the case of *Florendo v. Court of Appeals*,[8] made an elucidation of the above rule based on the 1985 Rules of Criminal Procedure as follows:

“The first paragraph of the Rule deals with the personal presence of the accused at the promulgation of judgment and its exception, i.e., in the case of a light offense where his personal presence is dispensed with. The third paragraph of the same Rule deals with the presence of all the accused at the promulgation regardless of the penalty imposed on them. There is no exception under this paragraph. All the accused must be present in person or through counsel or a representative.” (underscoring and emphasis supplied)

Moreover, what should be underscored in this case is that petitioner in the proceeding before the trial court never raised the issue that he is entitled to immediate release because of the averred lightness of the penalty imposed. Petitioner's Omnibus Motion is merely anchored on his failing health, hence the trial court evaluated the Omnibus Motion solely on this ground. It would contravene the basic principle of fairplay and justice if we would grant this instant petition based on an issue where the public prosecutor and the trial court were deprived of the opportunity to confront with.

On this note, it is settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal. Basic considerations of due process impel this rule. This principle equally applies to special civil actions for certiorari under Rule 65.[9] Thus, petitioner is deemed to have waived such issue for his failure to raise the same before the trial court.

Anent the issue of Motion for Bail, the trial court aptly denied the same on the ground that bail is only intended to afford the accused temporary liberty until the main case against him is resolved.[10] Here, the petitioner was

already convicted by a trial court's decision and furthermore, by failing to prove that his absence in the promulgation of the Decision was justifiable, he has undeniably lost all available remedies against said Decision such as the (a) the filing of a motion for new trial or reconsideration, and (b) an appeal from the judgment of conviction.[11] Clearly, even bail pending appeal is not available to him. Relevantly, Section 24, Rule 114 of the Rules of Court, states that:

“Sec. 24. No bail after final judgment; exception. – An accused shall not be allowed bail after the judgment has become final, unless he has applied for probation before commencing to serve sentence, the penalty and the offense being within the purview of the Probation Law. In case the accused has applied for probation, he may be allowed temporary liberty under his bail, but if no bail was filed or the accused is incapable of filing one, the court may allow his release on recognizance to the custody of a responsible member of the community. In no case shall bail be allowed after the accused has commenced to serve sentence. “

All in all, the chosen motions filed by petitioner have no leg to stand on, thus, the trial court did not err in issuing the warrant of arrest and the assailed Order, which ultimately makes the writ of habeas corpus unavailable to petitioner.

With the above disquisition then, the more reason we hold that petitioner is not entitled to the extraordinary writ of certiorari.

A petition for certiorari is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain speedy, and adequate remedy at law. There is “grave abuse of discretion” when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.[12]

As already discussed, the denial of the Omnibus Motion of petitioner was grounded on applicable laws and jurisprudence, hence the trial court did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the same.

Moreover, we take note that the instant Petition for Certiorari suffers from substantial defect as petitioner failed to file a motion for reconsideration of the Assailed Order before proceeding to this Court. It is worth mentioning that a motion for reconsideration is indispensable before resort to the special civil action for certiorari to afford the court or tribunal the opportunity to correct its error, if any.[13] There are well-settled exceptions, such as when the order is a patent nullity or where the issue raised is one purely of law or public interest is involved, however, none of them finds application in this case.[14] Worse, petitioner could not even make any justification for the glaring absence of the required motion for reconsideration. It is a hornbook principle that certiorari being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rule laid down by law.[15]

Another point of consideration is the failure of petitioner to implead the private complainant in the criminal case below as a private respondent in accordance with Section 5, Rule 65 of the Rules of Court, viz.:

“Section 5. Respondents and costs in certain cases. —

When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge,

court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.” (emphasis supplied)

Yet, another reason to dismiss the instant Petition for Certiorari exists. Here, the Assailed Order originated from a first level court. Petitioner could not however offer any plausible explanation why he filed this instant petition with this Court instead of the Regional Trial Courts which have concurrent jurisdiction with this Court and the Supreme Court to issue writs of certiorari. In other words, petitioner failed to observe the hierarchy of courts, the policy in relation to which has been explicitly defined in Section 4 of Rule 65, hence:

“Section 4. When and where petition filed. xxx.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in the aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

xxxx.”

The policy of hierarchy of courts cannot be nonchalantly undermined as held in the case of *Banez, Jr. v. Hon. Concepcion*,^[16] where the Supreme Court had an occasion to state that:

“The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of certiorari, prohibition and mandamus only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy.”

As a final note, though it is possible that petitioner is indeed physically weak, we do not appreciate that he tried to put one over the trial court by concocting an ill-conceived excuse for not attending the promulgation of the Decision. The Supreme Court has oft repeated that he who comes to court must come with clean hands.^[17] Perhaps it is time for petitioner to change his tack, because only the truth shall set him free.

WHEREFORE, premises considered, the instant Petition for Habeas Corpus and Petition for Certiorari are DENIED for lack of merit.

SO ORDERED.

Salazar-Fernando, R. A., Chairperson and Cruz, R. A., JJ., concur.

[1] Rollo, p. 3.

[2] Rollo, p. 29.

[3] 26 January 2015.

[4] Rollo, p. 40.

[5] In the Matter of the Petition of Habeas Corpus of Eufemia E. Rodriguez V. Villanueva, G.R.No. 169482, 29 January 2008.

- [6] Mangila v. Judge Panganiban, G.R. No. 160739, 17 July 2013.
- [7] Talabon v. The Iloilo Provincial Warden, G.R. No. L-1153, 30 June 1947 citing III Freeman on Judgments, 3171-3173.
- [8] G.R. No. 110886, 20 December 1994.
- [9] Suzuki v. de Guzman, G.R. No. 146979, 27 July 2006.
- [10] See Government of the United States of America v. Hon. Purganan, G.R. No. 148571, 24 September 2012.
- [11] Villena v. People of the Philippines, G.R. No. 184091, 31 January 2011.
- [12] People's Broadcasting v. The Sec. of the Department Labor and Employment, etc., G.R. No. 179652, 08 May 2009.
- [13] Reyes-Tabujara v. Hon. Court of Appeals, G.R. No. 172813, 20 July 2006.
- [14] Cendaña V. Avila, G.R. No. 168350, 31 January 2008.
- [15] Balayan v. Acorda, G.R. No. 153537, 5 May 2006.
- [16] G.R. No. 159508, 29 August 2012.
- [17] Osmeña v. Osmeña, G.R. No. 171911, 26 January 2010.

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