

**NARCISO OYAO, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES
AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.***G.R. No. L-44441. February 28, 1977*

Ponente: TEEHANKEE, J.

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The Court on the merits of the petition as strongly concurred in by the Solicitor General on behalf of respondent People who joins petitioner in asking for the granting of the relief sought, sets aside respondent court's dismissal of petitioner's appeal (with its denial of a special extension of the period for filing of his brief) and orders the reinstatement of his appeal from the trial court's judgment of conviction.

On October 6, 1975, respondent Court of Appeals granted petitioner, accused-appellant in an estafa case (together with his son) involving the amount of P2,517.00 representing a sum allegedly received for the purchase of ornamental seashells, an extension of 90 days (instead of the requested 45 days) with warning of no further extension for filing of his brief.

Before expiration of the extended period, petitioner's counsel Rodulfo F. Taneo moved for a second extension of 45 days because petitioner despite previous requests had failed to deliver the necessary amount for the mimeographing of the brief and because of three assistant lawyers, two had accepted employment in the government and he alone had been left to do all the legal work in their law office headed by Salutario J. Fernandez, who was kept busy by his official functions as Vice-Governor of Cebu Province. No objection or opposition to the requested second extension was made by the Office of the Solicitor General on behalf of respondent People but respondent court in its resolution of January 15, 1976 denied the extension and forthwith dismissed the appeal. Copy of the said resolution was received by petitioner's counsel on January 30, 1976 and petitioner's counsel filed the brief on February 7, 1976, within the period of the requested second extension (45 days from December 25, 1975).

Petitioner's counsel then filed on February 17, 1976 a motion for reconsideration of the dismissal resolution, certifying under oath to the truth and correctness of the grounds submitted in support thereof, explaining that petitioner was in distant islands and barrios in Bohol and Leyte attending to his business of buy and sell of assorted medicines to "make both ends meet" and therefore belatedly brought P100.00 for expenses of the brief which had already been filed, and submitting that the brief assigned and discussed several errors committed by the trial court that would justify reversal of the conviction. Respondent court however denied reconsideration in its Resolution of March 3, 1976, as follows:

"Resolved:

"Because no decision appended to brief; and appellant received notice to file brief within 30 days from August 25, 1975 (back of page 37, Rollo). He had therefore until September 24, 1975 to file same. Upon his motion asking only 45 days extension, p. 38, he was granted 90 days extension from expiration of reglementary period per resolution dated October 6, 1975 which expires December 23, 1975. His second motion for the extension

of 90 days previously granted which was however denied and appeal dismissed per resolution of 1-15-76. This resolution was, according to appellant in his urgent motion for reconsideration mailed on Feb. 14, 1976 (p. 47, rollo) received by appellant on January 30, 1976. This motion was however filed 3 days late after the resolution dated January 15, 1976 became final. Also, the brief mailed on February 7, 1976 was one day late even if appellant's motion for second extension of 45 days had been granted.

"In view whereof, motion denied. (p. 63, Rollo)."

A second motion for reconsideration was denied by respondent court as per its Resolution of May 5, 1976.

Hence, the petition at bar.

Required to comment on behalf of the State, the Office of the Solicitor General through then Acting Solicitor General, now Associate Justice of the Court of Appeals, Hugo E. Gutierrez, Jr., in an extensively prepared 18-page pleading filed on December 11, 1976 concurred with the merits of the petition and urged that the relief sought be granted and petitioner's appeal reinstated. Among the meritorious grounds mentioned in the said comment were the special reasons submitted for the additional extension requested and the State's lack of objection thereto, petitioner's prompt filing of the brief within the extended period requested, petitioner's prompt compliance with respondent court's resolution of February 20, 1976 which required him to append to his brief copies of the trial court's decision, contrary to the statement in the March 3, 1976 resolution denying reconsideration that "no decision (was) appended to brief;" and the imperatives of justice and equity invoked by petitioner for reinstatement of his appeal, assuming that the brief was filed one day late (even though he had in fact requested that the additional 45-day extension be counted from Christmas Day, 1975).

The Solicitor General therefore concluded that "(W)ith all due respect to respondent court, we submit that the (above) grounds relied upon by petitioner in his second motion for extension to file brief as well as his motions for reconsideration for the reinstate-ment and admission of his brief merits its approbation and therefore, we respectfully submit that the Resolutions of January 15, March 3, May 5 and June 25, all in 1976 issued by the Court of Appeals should be set aside in the interest of justice and the brief filed by petitioner on February 7, 1976 be admitted and his appeal reinstated."

We find the petition and the Solicitor General's comment in support of the same to be meritorious.

Suffice it to state that where there is no assertion or showing whatsoever of any intent to delay on the part of appellant or of injury or prejudice to the appellee, and valid special reasons are presented for the granting of an additional extension within which to file the ap-pellant's brief which in fact is filed within the requested extended period and such brief shows that it is not perfunctory but on the contrary presents strong prima facie arguments for hearing the side of the appellant instead of dismissing the appeal outright, the exer-cise of sound discretion favors the granting of such extension of time in consonance with the settled principle that judicial discretion must be exercised "wisely and prudently, never capriciously, with a view to substantial justice." [1]

As was aptly stressed in *Gregorio vs. Court of Appeals*, [2] "(T)he expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a juris-dictional matter and may be waived by the parties. Even after the expiration of the time fixed for the filing of the brief, the review-ing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee by reason of the delay or where there is no contention that the appellee's cause was prejudiced."

And as the Court held in *Obut vs. Court of Appeals*, [3] where compelling circumstances are cited by the appellant that would warrant an examination and review by the appellate court as the reviewer of the findings of fact made

by the trial court, "a liberal application of the rules becomes imperative and conversely an overstrict or rigid enforcement of the reglementary period for the filing of briefs, extensions of which for justifiable reasons are after all addressed to the sound discretion of the court, is to be shunned and avoided lest a grave miscarriage of justice be committed."

ACCORDINGLY, the resolutions of respondent Court of Appeals dismissing petitioner's appeal and denying reconsideration of such dismissal are hereby set aside and petitioner's appeal is hereby ordered reinstated. The case is remanded to respondent Court of Appeals for further proceedings and determination of petitioner's appeal on the merits. Since respondent People have joined in praying for granting of the relief sought, this decision shall be immediately executory upon promulgation.

Makasiar, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

[1] *Cucio vs. Court of Appeals*, 57 SCRA 68 and cases cited. See *Gregorio vs. Court of Appeals*, 72 SCRA 120 (July 28, 1976), per Martin, J.

[2] See footnote 1.

[3] 70 SCRA 546, 552 (April 30, 1976), per Muñoz Palma, J.

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