

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LEANDRO MONTE Y CASTRO, DEFENDANT AND APPELLANT.

G. R. No. L-21597. March 31, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Accused of qualified theft of goods or effects valued P250, appellant Leandro Monte y Castro, upon arraignment, pleaded guilty to said charge, whereupon the Court of First Instance of Manila rendered judgment sentencing him to an indeterminate penalty ranging from four (4) years, two (2) months and one (1) day of prision correccional to eight (8) years and one (1) day of prision mayor, and to pay the costs. In due course, thereafter, Monte filed the corresponding notice of appeal. Appellant now alleges, that "sensing his guilt", he had "voluntarily and spontaneously surrendered to the * * * authorities", that his "voluntary confession of guilt before the lion. Trial Court automatically suppressed his right to introduce evidence", and that said court had committed a "clear-cut error" in not considering in his favor the mitigating circumstance of voluntary surrender to the authorities, for which reason he prays that the case be remanded to the lower court to afford him an opportunity to prove said mitigating circumstance.

There is nothing, however, in the record to even suggest that appellant had voluntarily surrendered to the authorities. Although he was not assisted by counsel he having expressly waived the right to have one—when his plea of guilty was entered and the decision appeal" from rendered, the record shows, that his notice of appeal had been filed by his present counsel. Had appellant really surrendered to the authorities voluntarily, his counsel could have, and, in all probability, would have filed a motion, in the court of First instance, for an opportunity to establish said mitigating circumstance. Counsel has not even tried to explain why he had failed to make such move in the lower court. There is not even an affidavit of appellant in support of his alleged voluntary surrender. In the absence of such affidavit and of satisfactory explanation that appellant's failure to seek, in the lower court, a chance to prove the circumstance adverted to above had been due to excusable neglect, the relief prayed for cannot be granted.

Considering, further, that, on the basis of the record, the decision appealed from is in accordance with the facts and the law, said decision must be, as it is hereby affirmed, with costs against the appellant. It is so ordered.

Bengzon, C.J., Bautista Angela, Reyes, J.B.L., Barrera, Paredes, Dizon, Regain, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

Judgment affirmed.

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