

**AGUSTIN S. VITUALLA, SR., DECEASED, SUBSTITUTED BY HIS SON,
ANDRES V. VITUALLA, COMPLAINANT, VS. WENCESLAO I.
PONFERRADA, RESPONDENT.**

Administrative Case No. 1741. December 26, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

The question in this case is whether disciplinary action should be taken against respondent Wenceslao I. Ponferrada for his alleged failure to appeal the judgment of conviction in a case of slight physical injuries rendered against his client, complainant Agustin S. Vitualla, Sr.

Ponferrada claims that Vitualla never told him to appeal the conviction. Even if he was requested to appeal, he would have politely denied the request.

The fist encounter between Vitualla and Jaime Tano, two sexagenarians, in the public market of Mangagoy, Bislig, Surigao del Sur at about six-thirty in the morning of May 20, 1976 spawned three cases: one case of lesiones leves and another case of grave oral defamation filed by Tano against Vitualla and one counter-charge of lesiones leves filed by Vitualla against Tano. Ponferrada was Vitualla's counsel in the three cases.

They were tried jointly by the municipal court of Bislig on August 4 and 5, 1976. A decision dated December 13, 1976 was promulgated on December 21 or 23, 1976. Two of the cases were dismissed but Vitualla was convicted of lesiones leves and sentenced to pay a fine of P50 with subsidiary imprisonment in case of insolvency.

After the promulgation of the decision and in the presence of the judge and some court employees, Vitualla shook hands with Tano and distributed candies among the persons present. However, he realized some-time later that the stigma of conviction was not good for a man in his position: a prosperous businessman with properties and a drugstore and blessed with six children, two of whom are doctors, three are engineers and one a pharmacy graduate. His wife found him moody and disturbed at lunchtime.

There is no question that Ponferrada did not appeal the judgment of conviction. The factual issue, on which the parties introduced voluminous oral evidence (more voluminous than the evidence introduced in the criminal cases) was whether Vitualla requested Ponferrada to appeal and the latter did not comply with that request.

We find that the preponderance of the evidence shows that Ponferrada was told to appeal but, to suit his purpose, he did not do so. To avoid subsidiary imprisonment, Vitualla had to pay the fine of P50 on January 17, 1977, more than three weeks after the decision (Exh. J). He wrote the following note (with its misspellings) on his copy of the decision (Exh. K):

"This decision was given last Dec. 23/77, my legal council promised to file in the Court of First Instance before 15 days. My legal council disappeared unknown residence Complainant Agustin S. Vitualla Sr." (sic).

Ponferrada said that he would appeal on or before January 15, 1977 but on that date he could not be contacted by

Vitualla at his residence. Anyway, the 15-day period had already expired.

Vitualla paid Ponferrada P2,000 for his services. On February 12, 1977 he wrote a letter sent by registered mail to Ponferrada but it was returned to the sender as unclaimed. In that letter, Vitualla asked for the refund of P1,400 on the ground that Ponferrada's services were worth only P600 (Exh. F, p. 56, Rollo). Rollo).

He filed this disbarment case on April 6, 1977. He died during the pendency of the case on December 12, 1979. His eldest son was substituted for him. The persistence of Vitualla and his heirs in prosecuting this case is one indication that he was telling the truth when he said that Ponferrada reneged on his commitment to appeal the decision in the lesiones leves case.

All that Ponferrada was to do was to file in the municipal court a one-sentence notice of appeal. He did not have to handle the appeal. He could have advised Vitualla that he was filing the notice of appeal against his better judgment if in his opinion the appeal would not be prosper. After all, the appeal may be withdrawn later. But the point is that he did not perform the simple task of appealing for reasons known only to himself.

WHEREFORE, respondent Ponferrada is severely censured. He is warned that a more drastic penalty will be imposed on him for subsequent misconduct as a lawyer. A copy of this decision should be attached to his file in the Bar Confidant's office.

SO ORDERED.

Makasiar (Chairman), Concepcion, Jr., Abad Santos, Escolin, and Cuevas, JJ., concur.

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