

SEVERINO MACAVINTA, JR., PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE COURT OF APPEALS, RESPONDENTS.*G.R. No. L-36052. December 28, 1973*

Ponente: FERNANDO, J.

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What is before this Court from the procedural standpoint goes no further than the disposition of a motion for leave on the part of petitioner, who as set forth therein is a member of the Philippine Bar, to be allowed to appear on his own behalf and be heard in oral argument in support of a second motion for reconsideration previously denied for being filed late. It suffices to state that such a plea primarily premised on what he termed "the interest of justice and expediency" lacks support in law and therefore does not merit approval. As such a motion did impute negligence to his counsel of record, Attorney Sergio L. Guadiz, he was asked to comment. Instead of explaining the tardy submission, there was the rather lame assertion that it simply was not so. Under the circumstances, the Court feels that a brief recital of pertinent matters, rather than simply a minute resolution of denial, is called for.

- It comes as no surprise that the three-page urgent motion of petitioner to be heard on oral argument in support of the plea for a reconsideration of our resolution of denial of his petition to review a decision of the Court of Appeals convicting him of the crime of estafa is hardly impressed with the quality of persuasiveness. No argument buttressed either by statutory provisions or judicial decisions is found therein. His reliance, as set forth, is on such vague and general concept of justice and expediency. As a member of the Philippine Bar, he ought not to have been unaware therefore that there could be no valid expectation of its being granted. It could have been different if such motion for leave enclosing what would have been a second motion for reconsideration were possessed of merit. It is true his counsel of record, Sergio L. Guadiz, did invoke the guarantees of equal protection and due process. That is not enough. There must be a showing of such reliance as not being inappropriate. Unfortunately for petitioner, he was unable to show the relevancy of such constitutional safeguards to his particular situation. The twenty-three-page decision of Justice Magno S. Gatmaitan, concurred in by Justices Ramon C. Fernandez and Guillermo S. Santos of the Court of Appeals, is notable for the detailed and thorough manner in which both the factual and legal issues were threshed out. The disregard of the trust concept on funds pertaining to a client is a matter that has constantly been frowned upon, as shown by a host of decisions that need not be mentioned. Under the circumstances, to allege either a denial of due process or equal protection, identified as they are with undue hostility or arbitrariness, is not to carry conviction. Insofar as the denial of the motion for leave is predicated on the late filing which, as will be shown hereafter, is a fact that cannot be denied, it is enough that we refer to the equally well-settled principle that a client is bound by the failings of his counsel.[1]

- Now as to Attorney Sergio L. Guadiz. The motion for leave to argue orally on the part of petitioner and dispense with the services of counsel referred to the late filing that was the cause of the denial of the second motion for reconsideration. Such imputation of negligence certainly cannot go unnoticed. Accordingly, counsel Sergio L. Guadiz was asked to comment so that an opportunity could be afforded him to explain this apparent failure to live up to his obligation as a member of the bar. This is what he said in his comment: "1. He has no objection to the motion of the petitioner to take over as counsel for himself in the above-entitled case; 2. While

he confirms the allegation of the petitioner that the undersigned counsel is preoccupied due to heavy pressure of work in connection with other equally important cases, he begs to correct the erroneous impression that the filing of the second motion for reconsideration was due to his negligence. It is true that this Court resolved to deny the motion allegedly because it had been filed too late; however, the undersigned counsel humbly submits that it was filed on time. The records will show that the second motion for reconsideration was filed within fifteen days from receipt of the resolution denying the first motion for reconsideration and, consequently, was filed on time."^[2] A little more reflection on his part ought to have cautioned him against making such a flat and categorical state-ment that there was no tardy submission of his motion for leave to file a second motion for reconsideration. What is worse, he would dispute a finding of this Court based on an erroneous concept of the law, that is supposed to be within the ken of even new members of the bar. Had he consulted his records, how-ever, he would have been reminded that the denial of the petition for lack of merit was received by him on February 21, 1973. He was given an extension, first of fifteen days and thereafter of one more day. He therefore had until March 24, 1973 to file his first motion for reconsideration. That he did. On April 24, 1973, he received the resolution of this Court denying the first motion for reconsideration. He still had one day to file a second motion for reconsideration. Instead, the motion for leave to file a second motion for reconsideration came on May 4, 1973, enclosing in the most perfunctory and general terms the allegation that there was a denial of due process and equal protection. It is apparent then why his attention should be called not only to the need for filing pleadings on time, but also for greater care in keeping abreast of procedural rules. It certainly was not enough that he added in his comment the palliative words "humbly submits" to the terse and categorical declaration that the pleading in question "was filed on time."

WHEREFORE, the urgent motion for leave by petitioner to be heard on oral argument is denied. Attorney Sergio L. Guadiz is likewise admonished to take greater pains in the discharge of his obligations to a client, more specifically as to being cognizant of the periods for filing pleadings.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Cf. *Isaac v. Mendoza*, 89 Phil. 279 (1951); *Flores v. Phil. Alien Property Administrator*, 107 Phil. 773 (1960); *Valerio v. Secretary of Agriculture*, L-18587, April 23, 1963, 7 SCRA 719; *Mina v. Pacson*, L-17828, Aug. 31, 1963, 8 SCRA 774; *Ramos v. Potenciano*, L-19436, Nov. 29, 1963, 9 SCRA 589; *Joven-De Jesus v. Phil. National Bank*, L-19299, Nov. 28, 1964, 12 SCRA 477; *Rivera v. Vda. de Cruz*, L-21545, Nov. 27, 1968, 26 SCRA 58.

[2] Comment, 1.

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