

RICKY TALABA AND MELANIE TALABA, PETITIONERS, VS. HON. FERDINAND U. VALBUENA IN HIS CAPACITY AS THE CITY PROSECUTOR OF THE OFFICE OF THE CITY PROSECUTOR, CALOOCAN CITY AND ELVIN...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court, as amended, seeking to annul and set aside the resolution issued by Deputy City Prosecutor Alvin A. Almora of the Office of the City Prosecutor of Caloocan City dated December 3, 2012 and resolution of public respondent City Prosecutor Ferdinand U. Valbuena of Caloocan City dated July 25, 2014 which dismissed the criminal complaint for homicide against Elvin Bidal.

After due evaluation, this Court resolved to dismiss the instant petition. Department of Justice Department Circular No. 70, otherwise known as the 2000 National Prosecution Service (NPS) Rule on Appeal, provides that an aggrieved party may appeal the resolutions of the Chief State Prosecutor, Regional State Prosecutors and Provincial/City Prosecutors in cases subject of preliminary investigation/ reinvestigation by filing a verified petition for review with the Office of the Secretary, Department of Justice (DOJ). This Court cannot relax procedural rules based on petitioners' allegation that said remedy "would be inadequate, slow, insufficient" and will not promptly relieve the petitioners from the injurious effect of the resolution being complained of.

This Court finds that the petitioners failed to appeal to the DOJ the questioned resolution of the City Prosecutor within fifteen days from receipt of the same. Instead, they filed a petition for certiorari with this Court after the expiration of the period to appeal.

It has been consistently ruled that a petition for certiorari cannot be a substitute for lost appeal or for failure to file a petition for review. Where appeal is available to an aggrieved party, the action for certiorari will not be entertained. The remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefore is grave abuse of discretion.[1]

WHEREFORE, the petition for certiorari is DISMISSED.

SO ORDERED.

Tijam, N. G., Chairperson and Lopez, M. V., JJ., concur.

[1] Oscar R. Badillo, et al. vs. Court of Appeals, et al., G.R. No. 131903, June 26, 2008.

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