

ANGELO CAL, PETITIONER, VS. COURT OF APPEALS, HON. FE ALBANO MADRID, ET AL. AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 114343. December 28, 1995

Ponente: PANGANIBAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-114343/>

PANGANIBAN, J.:

This is a petition for review on certiorari of the Decision of the respondent Court of Appeals[1] dated November 11, 1993, denying petitioner's petition for certiorari, prohibition and mandamus, with prayer for restraining order, to challenge the orders of the Regional Trial Court (Branch 21) of Santiago, Isabela, in Criminal Case No. 0822, entitled "People vs. Angelo Cal".

The facts of the case are as follows: After an information for illegal recruitment was filed with the aforementioned trial court on September 5, 1990, petitioner posted bail for his provisional liberty. On June 8, 1992, a decision was rendered in the aforesaid criminal case wherein the petitioner herein was found guilty of violation of Article 36(a) of the Labor Code as amended [illegal recruitment], and sentenced to, among other things, suffer imprisonment of four years and pay a fine of P20,000. The decision was promulgated on July 15, 1992, in the presence of the petitioner, after which he was committed to jail by virtue of an order of commitment issued the same day. The following day, July 16, petitioner, assisted by his counsel, filed with the court a quo an application for probation, an affidavit of recognizance, and an application for release on recognizance. Also on the same day, the trial court issued an order directing the petitioner to report to the Provincial Probation and Parole Officer, and for the latter to conduct an investigation of the applicant and submit his report and recommendation within sixty days.

Almost two weeks later, on July 29, 1992, petitioner filed with the trial court a "Motion to Withdraw Application for Probation and Notice of Appeal", alleging that he "hastily filed his application `because of the threats employed upon him by the authorities' and that `he was not able to intelligently consult with his lawyer and reflect on the legal consequences and effects of his application for probation under the law' so that he may not be considered to have waived his right to appeal the decision" (decision, p. 1; rollo, p. 52). On account of the serious nature of said allegations, the lower court conducted a full-blown hearing to verify the petitioner's allegations. However, the court denied petitioner's motion to withdraw application, etc. on November 20, 1992, when it was determined that the accusations were baseless, and that petitioner's counsel did in fact properly advise him as to the effects and consequences of appeal and of probation, and that, notwithstanding such advice, in the words of the trial court —

"x x x (t)he accused chose the easy way out which was to apply for probation in order that he will not be detained because he could not post his bailbond. But later he went to talk to his employer Dindo Vales in Manila. He was induced to appeal. Understandably so because in the decision it was also found out that the recruitment activities of Dindo Vales and his placement agency did not have any license to recruit.

"It is unfortunate that the accused in attempting to withdraw his application for probation, would impute

negligence, misconduct, fraud and worst threats upon his lawyer and a personnel of the Court whose only fault was to help him and accommodate his lawyer's request. The accused would feign ignorance and stupidity in not knowing what he was doing when in fact his mind was working in a diabolical way by imputing fraud and wrongdoing in others. What simply happened here was that the accused decided to apply for probation because it was an easy way to avoid being detained in jail, to avoid the trouble of putting up a bailbond; to avoid further expenses of counsel and to end the case once and for all without suffering incarceration. But after his employer induced him to appeal, helped him to post his bail-bond and perhaps even provided him with another counsel, the accused changed his mind. He was fully aware and he knew what he was doing. He was properly advised by his lawyer who told him that if he will file his application for probation, he would lost his right to appeal although of course he was given contrary advice by his employer in Manila. It would be a dangerous precedent to allow the accused to make a mockery of the Probation Law. The case of *Yusi vs. Morales*[2] cannot apply to him.

"WHEREFORE, in the light of the foregoing considerations, the appeal is DENIED. The convict Angelo Cal is directed to make manifest his desire to pursue his application for probation by reporting to the Probation and Parole Officer, Cauayan, Isabela, within 72 hours from receipt of this order, otherwise he will be ordered to serve his sentence.

"SO ORDERED."

On December 14, 1992, petitioner filed a "Notice of Appeal from the Order dated November 20, 1992", which was denied by the court a quo on January 4, 1993, on the ground that petitioner had availed of the benefits of the Probation Law and therefore cannot avail of the remedy of appeal. Petitioner's motion for reconsideration of the last-mentioned order was likewise denied through an order dated June 1, 1993.

Then petitioner filed on July 9, 1993 a petition for certiorari, prohibition and mandamus, with prayer for restraining order, with the respondent Court of Appeals, which denied due course to and dismissed the same in its Decision of November 11, 1993. A motion for reconsideration thereof was also denied, for having been filed out of time by 23 days. Hence this petition before us.

Petitioner alleges that respondent Court "gravely erred and abused its discretion" (a) in affirming the trial court's order of July 15, 1992 for petitioner's immediate confinement to jail after promulgation of judgment but before same became final and executory, i.e., prior to the lapse of the period for filing appeal, notwithstanding that petitioner had posted bail, and (b) in affirming the trial court's order of November 20, 1992 which denied petitioner's motion to withdraw his application for probation and which did not give due course to his notice of appeal (petition, pp. 7, 11).

After deliberating on the petition, the public respondent's comment thereon filed by the Solicitor General, and petitioner's reply to comment, this Court is convinced that the petition is unmeritorious.

With respect to the first issue, there is no dispute that, as a rule, and unless the trial court directs otherwise, the bail bond posted by an accused remains in force at all stages of the case until its final determination. Now, in this case, since the trial court, immediately after the promulgation of judgment (and without waiting for the finality thereof), issued a commitment order despite petitioner's being out on bail, petitioner should have challenged the legality of such commitment order. However, instead of doing so, petitioner, after having been properly advised by counsel on the effects and consequences of probation, voluntarily — and with the assistance of counsel — filed an application for probation, along with an affidavit of recognizance and an application for release on recognizance of his counsel. Petitioner's actuations thus foreclosed his right to appeal.

Section 4 of P.D. No. 968, pertaining to the grant of probation, was amended by P.D. 1990 in order to make appeal and probation mutually exclusive remedies[3]. Thus, Sec. 4 provides specifically that "(T)he filing of the

application (for probation) shall be deemed a waiver of the right to appeal".

"The purpose of the amendment [of Sec. 4 of P.D. 968 by P.D. 1990] was, precisely, to prohibit an application for probation if the accused has perfected an appeal from the judgment of conviction [and vice versa].

x x x x x x x x

"P.D. No. 1990 [which took effect on January 15, 1986] was issued when it was observed that even if a person's conviction was finally affirmed after he had exhausted the appeal process (usually up to this Court), he nevertheless could still apply for probation and thus in effect undo such affirmance. To prevent loss of time, money, and effort on the part of the State in this wasteful exercise, the law was amended to make appeal and probation mutually exclusive remedies." (Bernardo vs. Balagot, supra.)

And that is only right since the legal positions behind appeal and probation, respectively, are diametrically opposed. This is because an accused applying for probation is deemed to have accepted the judgment. In fact, "x x x the application for probation is an admission of guilt on the part of an accused for the crime which led to the judgment of conviction and x x x the application for probation is considered a waiver upon his part to file an appeal, x x x"[4]

Thus, in this case, the petitioner's application for probation had the effect of a final determination of his case, and the cancellation of his bail bond. Therefore, the respondent Court of Appeals could not have done otherwise than to affirm the trial court's order of July 15, 1992 for petitioner's immediate confinement after promulgation of judgment, in view of the subsequent application for probation which rendered the said judgment final and immediately executory.

As for the second issue, although petitioner insists on faulting the courts a quo for denying his motion to withdraw his application for probation and rejecting his notice of appeal, his position is nonetheless untenable. The respondent Court of Appeals correctly held that the trial court's order of November 20, 1992, denying the petitioner's motion to withdraw his application for probation and rejecting his notice of appeal, partook of the nature of an order granting probation, which is not appealable.

Inasmuch as "(P)robation is a mere privilege and its grant rests upon the discretion of the court x x x (and) the grant of probation is x x x not automatic or ministerial"[5], and considering further that "(a)n order granting or denying probation shall not be appealable"[6], therefore, the appellate Court correctly affirmed the trial court's order of November 20, 1992, and denied the petition for certiorari, prohibition and mandamus, etc.

WHEREFORE, upon the foregoing considerations, this Court Resolves to DENY the instant petition, petitioner having failed to show any reversible error committed by the respondent appellate Court. No costs.

Romero, (Acting Chairman), Melo, and Vitug, JJ., concur.

[1] Sixth Division, composed of J. Artemon D. Luna, ponente, JJ. Arturo B. Buena and Alfredo J. Lagamon.

[2] No. L-61958, April 28, 1983, 121 SCRA 853. The sole issue in this case was, in the light of Sec. 4 of P.D. 968 as amended, treating the application for probation as amounting to a waiver of the right to appeal, whether such waiver is irrevocable, and whether persons who have applied for the benefits of the Probation Law may still withdraw their application during the period for filing an appeal and ask that their appeal from the judgment of conviction be given due course. The Supreme Court in this case ruled that such waiver is not irrevocable, given the peculiar circumstances of this case, particularly the fact that petitioners' counsel of record was not present when petitioners applied for probation. Although at that point in time they were represented by counsel de oficio

appointed by the court on the spot, nevertheless the said counsel de oficio was not fully acquainted with their case and could not have properly evaluated the strength of a possible appeal when he advised them about the effects of the application for probation. After having filed for probation, the accused subsequently changed their minds when they were advised by a relative who happened to be an MTC judge to appeal instead.

[3] Bernardo vs. Balagot, G.R. No. 86561, November 10, 1992, 215 SCRA 526; J. Isagani A. Cruz, ponente. See also Salgado vs. Court of Appeals, G.R. No. 89606, August 30, 1990, 189 SCRA 304.

[4] Yusi vs. Morales, *supra*.

[5] Bernardo vs. Balagot, *supra*., pp. 532-533.

[6] Last paragraph, Sec. 4, P.D. No. 968, as amended.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.