

WILLIAM T. TOH, PETITIONER, VS. HON. COURT OF APPEALS AND DECON CONSTRUCTION, RESPONDENTS.*G.R. No. 140274. November 15, 2000*

Ponente: GONZAGA-REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-140274/>**GONZAGA-REYES, J.:**

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals dated October 5, 1999 that dismissed the petition for certiorari and mandamus with temporary restraining order/preliminary injunction filed by petitioner William Toh (petitioner) against public respondent Judge Santiago G. Estrella (Judge Estrella) and private respondent Decon Construction (private respondent).

Private respondent is the plaintiff in a civil case for damages it filed against petitioner before the Regional Trial Court of Pasig City, Branch 68, docketed as Civil Case No. 65389 with public respondent Judge Estrella as presiding judge.

This instant petition stems from the incidents that transpired during the hearing held on October 10, 1996. Petitioner at that time was scheduled to present Engineer delos Santos (Eng. delos Santos) as his witness. The counsel of petitioner, Attorney Nardo M. de Guzman, Sr. (Atty. De Guzman), formally offered the testimony of the witness in this manner:

"(1) That the witness would be testifying on the fact that he is the contractor and supervising engineer of the building of defendant (herein petitioner);

(2) That he undertook the construction of the building from the start until it was finished; and

(3) That the witness exercised all the precautionary measures and saw to it that no one is injured or hurt and pursuant thereto have (sic) installed all safety measures."[2]

Immediately thereafter, the counsel of private respondent, Attorney Dominador Santiago, admitted the offer. Atty. De Guzman then manifested that he was dispensing with the examination of Engr. delos Santos and moved for continuance to enable him to present his next witness at the next hearing. Judge Estrella forthwith ordered in open court that he was dispensing with the testimony of Eng. delos Santos. The foregoing incidents are embodied in an Order[3] dated October 10, 1996 that formally dispensed with the testimony of Eng. delos Santos and scheduled the next hearing on October 24, 1996.

According to petitioner, upon realizing that he was misguided by the declaration of the court dispensing with the testimony of his witness and that the order was a palpable mistake, he timely filed a motion for reconsideration of said order which was denied. Dissatisfied, petitioner filed a petition for certiorari under Rule 65 of the Rules of Court and mandamus with the Court of Appeals. On October 5, 1999, the Court of Appeals issued the now assailed decision the dispositive portion of which reads:

"WHEREFORE, the petition is DENIED. The assailed Order dated October 10, 1996 and Resolution dated December 16, 1996 are AFFIRMED. Respondent judge is ordered to proceed with the trial with dispatch. No

costs.

SO ORDERED."[4]

Hence, this petition. Petitioner seeks to set aside the just quoted decision on these grounds:

"1. The Court of Appeals erred when it declared that there was no merit on (sic) the claim of the petitioner that he was deprived of his constitutional right to due process; and

2. That the Court of Appeals erred when it declared that the court of origin did not commit grave abuse of discretion amounting to lack and/or excess of jurisdiction under the facts presented by petitioner."[5]

The petition has no merit.

Petitioner insists that it was Judge Estrella who dispensed with the testimony of Eng. delos Santos contrary to the facts detailed in the assailed order. Petitioner points out that there was a need for Eng. delos Santos, whom petitioner regards as a vital and material witness, to testify and to identify documentary evidence in order to establish the factual basis of the purposes for which the witness' testimony was being offered. Petitioner now bewails the alleged violation of his constitutional right to due process of law. Petitioner then contends that the mere admission by private respondent of the purposes for which the testimony of said witness was being offered without the actual testimony of the witness would allegedly be an empty one "for want of factual or legal foundation".[6] Petitioner is thus convinced that the Court of Appeals erred when it ruled that Judge Estrella did not commit grave abuse of discretion.

Petitioner's arguments are untenable. The assailed order of Judge Estrella dated October 10, 1996 clearly states that it was the counsel of petitioner who manifested that the testimony of Eng. delos Santos be dispensed with upon the admission of the counsel of private respondent of the purposes for which said testimony was being offered. Petitioner's insistence that Judge Estrella *motu proprio* ordered the dispensation of the testimony of said witness is not borne out by the order of Judge Estrella which details the proceedings of the hearing in question. The burden of proving that it was Judge Estrella who initiated the move to dispense with the testimony of Eng. delos Santos rests with petitioner. In view of petitioner's failure to prove this allegation, the facts as recited in the order stand as the accurate narration of the events that occurred during the hearing of October 10, 1996.

We cannot sustain petitioner's urging that as a result of said order, he was "deprived of his most cherished and treasured constitutional right to due process."[7] It was the counsel of petitioner who freely and voluntarily manifested that the testimony of his own witness be dispensed with. As petitioner himself claims in this petition, it was "on second thought" that he realized that he had been misled by the declaration of Judge Estrella and that a palpable mistake had been committed, compelling him to file a motion for reconsideration of the order with the same court. Clearly, petitioner's right to due process was not violated since the act that supposedly infringed his right to due process was the making of his own counsel, a tactical lapse that binds petitioner as client. Moreover, petitioner's right to due process was not in anyway transgressed since he was able to move for the reconsideration of the order in question. We have ruled that a party cannot claim that he has been denied due process when he has availed of the opportunity to present his position.[8]

The issue now at hand is whether the resolution of Judge Estrella dated December 16, 1996 denying the motion for reconsideration of petitioner is a proper subject of a petition for certiorari under Rule 65 of the Rules of Court. We agree with the Court of Appeals that the facts of this case do not make out a case of grave abuse of discretion.

Petitioner believes that certiorari will issue because Judge Estrella committed a reversible error when he dispensed with the testimony of his witness. It bears stressing that for certiorari to lie, the petitioner must prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of

public respondent.[9] Jurisprudence has defined grave abuse of discretion in these terms:

"By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." [10] (Emphasis supplied.)

In the assailed resolution, Judge Estrella reasoned that:

"Very evident in the said Order are the following facts: (1) that the witness was placed on the stand and that his testimony would cover the facts as enunciated by counsel in his offer of testimony; (2) that the said offer of testimony was expressly admitted by opposing counsel; (3) with the said admission, the testimony of said witness was formally dispensed with; and (4) that no reservation to recall said witness was made by counsel.

The Court sees no cogent reason why the said witness should be examined any further since his testimony as summarized in the offer made by counsel was expressly admitted by opposing counsel. With the said admission, the testimony of said witness is uncontroverted and even admitted as fact by opposing counsel. Hence, further examination of the witness would, in the Court's mind, serve no real purpose except to unduly delay the disposition of this case." [11]

As can be gleaned from the foregoing, the resolution cannot be characterized as whimsical, arbitrary or capricious. No hint of grave abuse of discretion can be attributed to public respondent. Assuming that the order and resolution were erroneous, such error would be merely deemed as an error of judgment that cannot be remedied by certiorari.

We have set a clear demarcation line between an error of judgment and an error of jurisdiction. An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal, while an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction, and which error is correctable only by the extraordinary writ of certiorari.[12] Thus, the Court of Appeals correctly ruled in dismissing the petition for certiorari of petitioner. The ruling is in accord with the settled principle that certiorari will not be issued to cure errors in proceedings or erroneous conclusions of law or fact,[13] more so in the case at bar when no error was committed by respondent judge.

WHEREFORE, the petition is DENIED and the impugned Decision of the Court of Appeals is hereby AFFIRMED. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.

[1] Per Justice Jesus M. Elbinias and concurred in by Associate Justices Delilah Vidallon Magtolis and Rodrigo V. Cosico, Court of Appeals, First Division.

[2] Rollo, p. 21.

[3] Ibid.

[4] Ibid., p. 19.

[5] Ibid., p. 10.

[6] Ibid.

[7] Ibid., p. 12.

[8] See *Naguiat vs. NLRC*, 269 SCRA 564 (1997).

[9] *Solvic Industrial Corporation vs. NLRC*, 296 SCRA 432 (1998), p. 441.

[10] Ibid.

[11] *Rollo*, p. 23.

[12] *Fortich vs. Corona*, 289 SCRA 624 (1989), p. 642.

[13] *BF Corporation vs. Court of Appeals*, 288 SCRA 267 (1998), p. 279.

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.