

PETER BEJARASCO, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 159781. February 02, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

This case concerns the dire consequences of a litigant's failure to periodically follow up with his counsel on the developments of his appeal.

The petitioner was convicted on February 16, 2001, for grave threats and grave oral defamation in the Municipal Trial Court (MTC) in Sibonga, Cebu. On July 31, 2001, the Regional Trial Court (RTC), Branch 26, in Argao, Cebu affirmed the convictions. In due course, the petitioner, then represented by the Public Attorney's Office (PAO), sought the reconsideration of the RTC decision, claiming that he had not filed his appeal memorandum because of the MTC's failure to give him free copies of the transcripts of stenographic notes. He argued that the RTC's decision should be set aside and the criminal cases against him should be dismissed due to the prematurity and the serious errors of facts and law. However, the RTC denied the petitioner's motion for reconsideration on September 24, 2001.

On October 12, 2001, the petitioner, this time represented by Atty. Luzmino B. Besario (Atty. Besario), a private practitioner, filed in the Court of Appeals (CA) a motion for extension of time to file his petition for review (C.A.-G.R. CR No. UDK-181). The CA granted his motion. Instead of filing his petition for review within the period granted, however, Atty. Besario sought another extension, but still failed in the end to file the petition for review. Thus, on March 13, 2002, the CA dismissed his appeal. After the dismissal became final and executory, entry of judgment was made on April 4, 2002.

Thereafter, on March 31, 2003, the MTC issued a warrant of arrest against the petitioner, who surrendered himself on May 22, 2003.

On July 16, 2003, the petitioner filed in the CA his petition for review through another attorney, alleging that Atty. Besario had recklessly abandoned him and had disappeared without leaving a trace.

In its resolution dated August 14, 2003, the CA denied admission to the petition for review and ordered it expunged from the records; and reiterated its March 13, 2002 resolution of dismissal.[1]

Aggrieved, the petitioner is now before the Court to plead his cause. He submits that Atty. Besario's reckless abandonment of his case effectively deprived him of his day in court and of his right to due process; and that said former counsel's actuation constituted reckless and gross negligence that should not be binding against him.

The petition is denied due course.

That Atty. Besario was negligent in handling the petitioner's case was clear. Indeed, his abject failure to file the petition for review in the CA despite his two motions for extension for that purpose warranted no other conclusion

but that he was negligent.

Nonetheless, we find no justification to reverse the CA's disposition of the appeal. The petitioner was bound by Atty. Besario's negligence.

The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique.[2] The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself.[3] A recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.

Truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer. It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case;[4] hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.

Here, the petitioner took nearly 16 months from the issuance of the entry of judgment by the CA, and almost 22 months from when the RTC affirmed the convictions before he actually filed his petition for review in the CA. He ought to have been sooner alerted about his dire situation by the fact that an unreasonably long time had lapsed since the RTC had handed down its dismissal of his appeal without Atty. Besario having updated him on the developments, including showing to him a copy of the expected petition for review. Also, he could have himself verified at the CA whether or not the petition for review had been filed, especially upon realizing that Atty. Besario had started making himself scarce to him. In short, the petitioner's failure to know or to find out the real status of his appeal rendered him undeserving of any sympathy from the Court vis-à-vis the negligence of his former counsel.

The right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by the law.[5] The right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed. So it is with the petitioner.

WHEREFORE, the Court affirms the resolution promulgated on August 14, 2003 in C.A. G.R. CR No. UDK-181 for failure of the petitioner to show a reversible error committed by the Court of Appeals.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Villarama, Jr., and Sereno, JJ., concur.

[1] Rollo, p. 46.

[2] *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185, 192.

[3] *People v. Bitanga*, G.R. No. 159222, June 26, 2007, 525 SCRA 623, 632.

[4] *Delos Santos v. Elizalde*, G.R. Nos. 141810 & 141812, February 2, 2007, 514 SCRA 14, 31, citing *Bernardo v. Court of Appeals (Special Sixth Division)*, G.R. No. 106153, July 14 1997, 275 SCRA 413.

[5] *Estate of Felomina G. Macadangdang v. Gaviola*, G.R. No. 156809, March 4, 2009, 580 SCRA 565, 573.

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