

NIÑO MASAS Y MILAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 177313. December 19, 2007*

Ponente: CARPIO, J.

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Petitioner Niño Masas y Milan[1] (petitioner) and co-accused Gerry Ong (Ong) were charged before the Regional Trial Court of Calamba, Misamis Occidental, Branch 36 (RTC-Branch 36) with violation of Section 5, Article 2 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 for having in their possession one sachet of shabu and for selling two sachets with two strips of aluminum foil to the poseur buyer. Upon arraignment, petitioner, assisted by a lawyer from the Public Attorney's Office (PAO), pleaded not guilty to the crime charged. After trial, the RTC-Branch 36 rendered judgment finding petitioner guilty as charged and sentencing him to suffer the penalty of life imprisonment and a fine of P500,000 without subsidiary imprisonment in case of insolvency. The RTC-Branch 36 acquitted co-accused Ong for failure of the prosecution to prove his guilt beyond reasonable doubt.

Petitioner seasonably appealed to the Court of Appeals but the latter dismissed the appeal for failure to file the appellant's brief within the required period, citing Section 1(e), Rule 50 of the Rules of Court in its Resolution dated 22 September 2006.

On motion for reconsideration, petitioner, thru the PAO, contended that Section 8 of Rule 124 admits of an exception, that is, where the appellant is represented by counsel de oficio.

The motion for reconsideration was denied in the Resolution dated 6 February 2007. The Court of Appeals ruled that petitioner could not take refuge under the exception in Section 8 of Rule 124 "lest it could set as a precedent for other counsels de oficio to take their own sweet time in filing the appellant's brief." The Court of Appeals noted that Atty. Carmelito Sumile (Atty. Sumile), petitioner's counsel de oficio, received the resolution directing him to file the required appellant's brief but no brief was filed nor a motion for its extension. No explanation was offered by petitioner or counsel for their failure to comply with the resolution. Atty. Sumile is a lawyer from the PAO in Calamba, Misamis Occidental.

The present petition raises the lone issue of whether or not the Court of Appeals failed to consider the exception in dismissing the appeal.

We take note of the Resolution dated 22 September 2006 where the Court of Appeals declared that petitioner's "appeal is deemed ABANDONED and accordingly DISMISSED for failure to file the required Appellant's Brief." It cited "Section 1(e), Rule 50 of the Rules of Court" as its basis for dismissing the appeal. This is erroneous. Rule 50 is under the Rules of Civil Procedure. Since the instant case is a criminal case, the appropriate rule is found in the Revised Rules of Criminal Procedure.

As ground for the petition, petitioner invokes Section 8 of Rule 124 of the Revised Rules of Criminal Procedure

and contends that he was represented by counsel de oficio and that he was not furnished a prior notice to show cause why his appeal should not be dismissed. The Court of Appeals outrightly dismissed petitioner's appeal without looking into the merits of the case and disregarded the exception under Section 8 of Rule 124. Petitioner points out that a mere reading of the decision of the RTC-Branch 36 will reveal several glaring errors which necessitate a review of the case. These errors include the conviction of petitioner for violation of Section 5 (sale of dangerous drugs) despite the fact that the information merely alleged possession of dangerous drugs; the sentence of life imprisonment despite the absence in the Information of any allegation on the weight or volume of the alleged drugs; the questionable findings of a buy-bust operation; and obvious irregularity in the chain of custody of the confiscated items.

Section 8 of Rule 124 of the Revised Rules of Criminal Procedure provides:

SEC. 8. Dismissal of appeal for abandonment or failure to prosecute. - The Court of Appeals may, upon motion of the appellee or motu proprio and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel de oficio.

The Court of Appeals may also, upon motion of the appellee or motu proprio, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal. (emphasis supplied)

The provision is clear and unambiguous. Section 8 provides for an exception in the dismissal of appeal for failure to file the appellant's brief, that is, where the appellant is represented by a counsel de oficio.

The respondent, thru the Office of the Solicitor General, opposes the petition and argues that petitioner is not represented by a counsel de oficio as the latter was not duly appointed by the court to represent petitioner. However, it should be noted that in the Resolution dated 22 September 2006 dismissing the appeal and the Resolution dated 6 February 2007 denying petitioner's motion for reconsideration, the Court of Appeals itself referred to Atty. Sumile as petitioner's counsel de oficio and ruled that the failure of petitioner's "counsel de oficio to comply with Our resolution [is] a gross disregard to the Rules."

Further, petitioner even filed a motion to litigate as pauper^[2] in this Court as he has no work and no real property where he could derive any income. Obviously, he could not afford the services of a counsel de parte for which reason he was previously represented by a PAO lawyer even in the trial court.

This notwithstanding, also under Section 8, a criminal case may be dismissed by the Court of Appeals motu proprio and with notice to the appellant if the latter fails to file his brief within the prescribed time. The phrase "with notice to the appellant" means that a notice must first be furnished the appellant to show cause why his appeal should not be dismissed.^[3] No notice was given to petitioner to this effect. Besides, petitioner, in his motion for reconsideration, reiterated to the court that it cannot "order the dismissal of the appeal without prior notice to the appellant."^[4]

As the Court held in *De Guzman v. People*:^[5]

A healthy respect for petitioner's rights should caution courts against motu proprio dismissals of appeals, especially in criminal cases where the liberty of the accused is at stake. The rules allowing motu proprio dismissals of appeals merely confer a power and do not impose a duty; and the same are not mandatory but merely directory which thus require a great deal of circumspection, considering all the attendant circumstances. Courts are not exactly impotent to enforce their orders, including those requiring the filing of appellant's brief. This is precisely the *raison d'être* for the court's inherent contempt power. Motu proprio dismissals of appeals are thus not always called for. Although the right to appeal is a statutory, not a natural, right, it is an essential

part of the judicial system and courts should proceed with caution so as not to deprive a party of this prerogative, but instead, afford every party-litigant the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. More so must this be in criminal cases where, as here, the appellant is an indigent who could ill-afford the services of a counsel de parte.

WHEREFORE, we GRANT the petition. We SET ASIDE the Resolutions dated 22 September 2006 and 6 February 2007 of the Court of Appeals. We order the Court of Appeals to REINSTATE petitioner's appeal in CA-G.R. CR-HC No. 00071 entitled "People of the Philippines v. Niño Jesson Masas y Milan." Petitioner shall file his appellant's brief in the Court of Appeals within a non-extendible period of fifteen days from receipt of this Resolution.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Spelled as "Millan" in the Information and the Decision of the trial court, rollo, pp. 26-42.

[2] Rollo, pp. 2-3.

[3] Foralan v. CA, 311 Phil. 182 (1995).

[4] Rollo, p. 51.

[5] G.R. No. 167492, 22 March 2007, 518 SCRA 767, 772-773.

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