

REPUBLIC OF THE PHILIPPINES SUPREME COURT MANILA SECOND DIVISION ANSELMO DE LEON CUYO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 192164. October 12, 2011

Ponente: SERENO, J.

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SERENO, J.:

Before us is a Petition for Review under Rule 45 assailing the Order^[1] issued by Branch 28 of the Regional Trial Court of San Fernando City, La Union, in Special Civil Action Case No. 0001-10.

The antecedent facts are as follows:

Petitioner Anselmo Cuyo and Alejo Cuyo are estranged brothers. Petitioner filed a complaint for illegal possession of firearms against Alejo. On 20 November 2003, petitioner appeared before Judge Samuel H. Gaerlan of the Regional Trial Court (RTC), Branch 26, San Fernando City, La Union with regard to the application for a search warrant by the Criminal Investigation and Detective Group (CIDG) for the search of the house of Alejo, and, in the course of the proceedings, made untruthful statements under oath. Consequently, Alejo filed a complaint for perjury against petitioner.

On 25 August 2009, Branch 1 of the Municipal Trial Court in Cities (MTCC) in San Fernando City, La Union, found petitioner guilty beyond reasonable doubt of the offense of perjury under Article 183 of the Revised Penal Code and sentenced him to imprisonment of four (4) months and one (1) day to one (1) year. He was likewise ordered to pay private complainant Alejo Cuyo the amount of P10,000 for attorney's fees and litigation expenses.^[2] Petitioner was not present during the promulgation of the judgment and was represented by his counsel instead.

On 28 August 2009, petitioner filed a Motion for Reconsideration^[3] of the Decision, but the motion was subsequently denied^[4] by the MTCC on 19 October 2009.

Petitioner received the Order of the MTCC denying his Motion for Reconsideration on 23 October 2009. He subsequently filed a Motion for Probation^[5] on 5 November 2009.

On 6 January 2010, the MTCC issued an Order^[6] denying petitioner's latter motion on the ground that it had been filed beyond the reglementary period of fifteen (15) days as provided by Section 4 of Presidential Decree No. 968, as amended, or the Probation Law of 1976.^[7] The reckoning date used by the MTCC in computing the 15 day period was the day of promulgation on 25 August 2009, tolled by the period from the filing of the Motion for Reconsideration to the receipt of the Order denying the motion on 23 October 2009. Thus, the MTCC stated:

It is note worthy (sic) that four (4) days has (sic) lapsed from August 25, 2009 when the decision was entered in the criminal docket of this court and the time the motion for reconsideration was filed.

Since the period to apply for probation as provided for by law in (sic) only fifteen (15) days, the accused has

only the remaining eleven (11) days of the fifteen (15) days reglamentary period to apply for probation. The 11 day period from October 23, 2009 when he received the denial of his motion ended on November 3, 2009.

The Motion for Probation was received by the court on November 5, 2009 when the decision has already become Final and Executory as of November 3, 2009.

On 7 January 2010, petitioner moved for the reconsideration[8] of the latter order, asking for a liberal interpretation of the rules with regard to the computation of the period for applying for probation. He also filed on 10 January 2010 a Supplemental Motion[9] to the Motion for Reconsideration praying for the deferment of the issuance of the Warrant of Arrest or the recall of the warrant if one had already been issued.

The MTCC, however, denied the motion on 3 February 2010. Reference was made to *Neypes v. Court of Appeals*,[10] wherein the appeal period was sought to be standardized, by establishing the rule that a fresh period of 15 days was allowed within which to file a notice of appeal, counted from the receipt of the order dismissing a motion for new trial or a motion for reconsideration. The MTCC, however, did not view *Neypes* as applicable to the case of petitioner. It believed that *Neypes* applied only to Rules 40, 42, 43 and 45 appeals and not to a Rule 122 appeal, all under the Rules of Court.

Petitioner filed a Petition[11] under Rule 65 before the Regional Trial Court (RTC) of San Fernando City, La Union alleging that the MTCC had committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied his Motion for Probation. He asserted that the "fresh period rule" established in *Neypes* should also be applied to criminal cases. Petitioner prayed for a liberal construction and application of the rules. He also prayed that the RTC stay the execution of the Decision dated 25 August 2009, and that it recall the warrant of arrest issued pending the resolution of the issues.

On 26 April 2010, the RTC denied the Petition and ruled that the application period had lapsed when petitioner neither surrendered nor filed a motion for leave to avail himself of the remedies under the Rules of Court. In addition, the RTC ruled that petitioner failed to implead private complainant Alejo Cuyo in violation of Rule 65, Section 5. This rule mandates that petitioner should join as private respondent the person interested in sustaining the proceedings of the court.

Petitioner filed the present Rule 45 Petition for Review, assailing the Order of the RTC. He contends that the RTC erred in computing the 15-day period provided in the Probation Law; and in dismissing the petition on procedural issues without determining whether petitioner is entitled to avail himself of the benefits of probation.

We find some merit in the petition, but only with respect to the additional ground for dismissal of the certiorari petition cited by the RTC - the failure to implead private complainant as a respondent in the Petition for Certiorari filed before the RTC. We uphold the rest of the RTC Decision, and in doing so, fully affirm its dispositive portion.

The RTC held that petitioner failed to observe Rule 65, Sec. 5, which states:

Respondents and costs in certain cases. - When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondent shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.

While it may be correct to say that petitioner failed to comply with the rule cited above, it would not be correct to dismiss the petition based on this provision. Rule 3, Sec. 11 states that neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action. Thus, the trial court should have ordered petitioner to add private complainant as a respondent to the case.

Nevertheless, we agree with the RTC that the Motion for Probation was filed out of time.

Sec. 6 of Rule 120 of the Rules of Court provides:

Promulgation of judgment. - The judgment is promulgated by reading it in the presence of the accused and any judge of the Court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

... ..

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgement in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (Emphasis supplied.)

Petitioner was charged with and found guilty of perjury. He was sentenced to suffer imprisonment of 4 months and 1 day to 1 year, a period which is considered as a correctional penalty. Under Article 9 of the Revised Penal Code, light felonies are those infractions of law for the commission of which the penalty of *arresto menor* (one to thirty days of imprisonment) or a fine not exceeding two hundred pesos (P200), or both are imposable. Thus, perjury is not a light felony or offense contemplated by Rule 120, Sec. 6. It was therefore mandatory for petitioner to be present at the promulgation of the judgment.

To recall, despite notice, petitioner was absent when the MTCC promulgated its judgment on 25 August 2009. Pursuant to Rule 120, Sec. 6, it is only when the accused is convicted of a light offense that a promulgation may be pronounced in the presence of his counsel or representative. In case the accused failed to appear on the scheduled date of promulgation despite notice, and the failure to appear was without justifiable cause, the accused shall lose all the remedies available in the Rules against the judgment. One such remedy was the Motion for Reconsideration of the judgment of the MTCC filed by petitioner on 28 August 2009. Absent a motion for leave to avail of the remedies against the judgment, the MTCC should not have entertained petitioner's Motion for Reconsideration. Thus, petitioner had only 15 days from 25 August 2009 or until 9 September 2009 to file his Motion for Probation. The MTCC thus committed grave abuse of discretion when it entertained the motion instead of immediately denying it.

In *People of the Philippines v. De Grano*,^[12] we stated:

When the Decision dated April 25, 2002 was promulgated, only Estanislao Lacaba was present. Subsequently thereafter, without surrendering and explaining the reasons for their absence, Joven, Armando, and Domingo joined Estanislao in their Joint Motion for Reconsideration. In blatant disregard of the Rules, the RTC not only failed to cause the arrest of the respondents who were at large, it also took cognizance of the joint motion.

The RTC clearly exceeded its jurisdiction when it entertained the joint Motion for Reconsideration with respect to the respondents who were at large. It should have considered the joint motion as a motion for reconsideration that was solely filed by Estanislao. Being at large, Joven and Domingo have not regained their standing in court. Once an accused jumps bail or flees to a foreign country, or escapes from prison or confinement, he loses his standing in court; and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court. (Emphasis supplied.)

Petitioner asserts that his failure to appear during the promulgation was for a justifiable cause. He alleges that he was on board an international vessel as a seaman at the time of the promulgation. He further alleges that the MTCC was informed of this fact. He insists that his absence was justified, thus exempting him from the application of Rule 120, Sec. 6.

Petitioner, however, did not file a motion for leave to avail himself of the remedies prior to filing his Motion for Reconsideration. The hearing on the motion for leave would have been the proper opportunity for the parties to allege and contest whatever cause prevented petitioner from appearing on 25 August 2009, and whether that cause was indeed justifiable. If granted, petitioner would have been allowed to avail himself of other remedies under the Rules of Court, including a motion for reconsideration.

Moreover, in his Reply[13] filed on 14 October 2010, petitioner belatedly questions the propriety of the promulgation. In so doing, petitioner is barred by estoppel for failing to raise the issue at the earliest possible opportunity, that is, when the case was still pending with the MTCC.

As a final point, while we held in *Yu v. Samson-Tatad*[14] that the rule in *Neypes* is also applicable to criminal cases regarding appeals from convictions in criminal cases under Rule 122 of the Rules of Court, nevertheless, the doctrine is not applicable to this case, considering that petitioner's Motion for Probation was filed out of time.

WHEREFORE, in view of foregoing, the Petition is DENIED. The Order issued by the Regional Trial Court in Special Civil Action Case No. 0001-10 is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Reyes, and Perlas-Bernabe,[*] JJ., concur.

[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated 3 October 2011.

[1] Rollo, pp. 23-27, penned by Judge Victor M. Vilorio.

[2] Id. at 52-61, penned by Judge Manuel R. Aquino.

[3] Id. at 62-71.

[4] Id. at 72.

[5] Id. at 73-74.

[6] Id. at 49.

[7] Sec. 4. Grant of Probation. - Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period of perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best: Provided, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable. (Sec. 1 of P.D. 1990)

The provisions of Section 4 of Presidential Decree No. 968 as above amended, shall not apply to those who have already filed their respective applications for probation at the time of the effectivity of this Decree. (Sec. 3 of P.D. 1990).

[8] Rollo, pp. 75-78.

[9] Id. at 79-84.

[10] G.R. No. 141524, 14 September 2005, 469 SCRA 633.

[11] Rollo, pp. 28-42.

[12] G.R. No. 167710, 5 June 2009, 588 SCRA 550, 570.

[13] Rollo, p. 148.

[14] G.R. No. 170979, 9 February 2011.

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