

**REYNALDO POSIQUIT @ “CHEW”, PETITIONER, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.***G.R. No. 193943. January 16, 2012*

Ponente: REYES, J.

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This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by Reynaldo Posiquit @ “Chew” (petitioner) assailing the Decision[1] dated April 29, 2009 and Resolution[2] dated April 14, 2010 issued by the Court of Appeals (CA) in CA-G.R. CR No. 31214 which, inter alia, affirmed the conviction of the petitioner and Jesus Saunar (Saunar) for violation of Section 11, Article II of Republic Act No. 9165 (R.A. 9165), otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

This Court notes that Saunar did not join the petitioner in filing the instant petition. Thus, our discussion would be limited to the petitioner’s case.

On the strength of a Search Warrant issued by Executive Judge Romulo Villanueva of the Regional Trial Court (RTC) of Ligao City, the combined forces of Albay Police Provincial Office, Liban Police Station, Polangui Police Station and the Philippine Drug Enforcement Agency (PDEA) conducted a search on the house of Saunar in Barangay Kinale, Polangui, Albay on September 18, 2002.

Before the search team arrived, the petitioner, Saunar, Ricardo Morada and Myla Dela Cruz (Dela Cruz) were inside Saunar’s house engaged in an activity which seemed like a pot session. Upon the arrival of the search team’s vehicles in front of Saunar’s house, the group of the petitioner scampered towards the back of the adjacent house. While attempting to escape, the petitioner threw his wallet away. However, members of the search team caught up with the petitioner and, thereupon, recovered his wallet which contained three small plastic sachets containing white crystalline substances.

Meanwhile, the other members of the search team, after showing the search warrant to Saunar and his wife, proceeded to conduct the search. The search yielded, among others, three small plastic sachets and one big plastic bag containing white crystalline substances and a stick of dried marijuana leaves. After the search was completed, the search team prepared a receipt of the items seized which was signed by the members of the search team and Saunar. Pictures of the seized items were thereafter taken. The petitioner and Saunar were then brought to the police station.

The following day, SPO4 Herminigildo Caritos brought the seized items to the Philippine National Police – Regional Crime Laboratory at Camp Simeon Ola, Legaspi City where it was examined by Forensic Chemist P/Insp. Josephine Clemen. Laboratory tests on the seized items confirmed that the plastic sachets contained a total of 3.548 grams of methamphetamine hydrochloride or shabu and that the confiscated stick was indeed dried marijuana leaves weighing 0.2869 grams.

Thus, in an Information docketed as Criminal Case No. 4650, the petitioner and Saunar were charged with

violation of Section 11, Article II of R.A. 9165 before the RTC of Ligao City.

The petitioner denied the allegations against him and claimed that, at the time of the search in Saunar's house, he and the group of Saunar were just having a drinking spree. When he and Dela Cruz were about to go home, the search team immediately arrived at the said house and pointed their guns at them. He insisted that he ran away because he was surprised. When the armed men caught up with him, the former boxed him on the nape and had him handcuffed. The petitioner admitted ownership of the wallet that was seized by the search team but denied that it contained plastic sachets containing shabu.

After due proceedings, the RTC of Ligao City, on September 25, 2007, rendered a Joint Judgment[3] finding the petitioner and Saunar guilty beyond reasonable doubt of the crime charged. They were then sentenced to suffer the indeterminate penalty of imprisonment ranging from thirteen years as minimum to fifteen years as maximum and to each pay a fine in the amount of P300,000.00. In convicting the petitioner, the RTC of Ligao City intimated that his flight can only be interpreted as a deliberate intention of a guilty person to prevent apprehension.

Feeling aggrieved, the petitioner and Saunar appealed from the said disposition to the CA. The petitioner and Saunar asserted that the confiscation, inventory and taking of pictures of the seized items were not conducted in the presence of a representative from the media, the Department of Justice (DOJ) and an elected public official, contrary to Section 21 (a) of R.A. 9165. They likewise asserted that the chain of custody of the seized items was not clearly established by the prosecution.

On April 29, 2009, the CA rendered the herein assailed Decision[4] affirming in toto the September 25, 2007 Joint Judgment of the RTC of Ligao City. The CA held that the evidence adduced by the prosecution adequately showed that the substance confiscated was the same specimen submitted for laboratory tests.

On the absence of a representative from the media, the DOJ and an elected public official during the confiscation, inventory and taking of pictures of the seized items, the CA held that the presence of the said persons becomes mandatory only in the absence of the persons from whom the confiscated items are taken or their representative. In any case, the CA pointed out that the integrity and identity of the seized items still stand as the prosecution was able to show an unbroken chain of custody over the same. The petitioner and Saunar sought to reconsider the April 29, 2009 Decision but the same was denied by the CA in its April 14, 2010 Resolution.[5]

Undaunted, the petitioner instituted the instant petition for review on certiorari asserting the following arguments: (1) the CA erred in convicting the petitioner for violation of Section 11, Article II of R.A. 9165 in conspiracy with Saunar; (2) the elements of illegal possession of dangerous drugs were not proven beyond reasonable doubt; and (3) the chain of custody of the seized items was not clearly established by the prosecution.

The petition is denied.

At the outset, this Court notes that the filing of the instant petition is accompanied by glaring lapses on the part of the petitioner which would warrant its outright denial.

A copy of the April 14, 2010 Resolution of the CA denying the petitioner's motion for reconsideration was received by the latter on May 5, 2010. The petitioner had, following the reglementary 15-day period from receipt of the denial of his motion for reconsideration by the CA,[6] until May 20, 2010 within which to file a petition for review on certiorari under Rule 45 with this Court.

The petitioner, by himself, filed instead with this Court a Motion for Extension of Time to Appeal/ For Review.[7] The said Motion was sent by the petitioner through JRS, a private courier, on May 20, 2010 and was actually received by this Court on May 21, 2010. Thus, the said Motion for Extension was filed a day late.

It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it. Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend.[8]

Also, the said motion for extension was not accompanied by a proof of service thereof to the adverse party. In view of the foregoing, the instant petition indubitably warrants outright denial. Nonetheless, even if we are to disregard the said procedural lapses, the instant petition would still be denied.

A perusal of the arguments set forth by the petitioner in support of the instant petition would clearly show that the same only raised questions of fact. The petition failed to show extraordinary circumstance justifying a departure from the established doctrine that findings of fact of the CA are conclusive on the Court and will not be disturbed on appeal. The issue on whether the prosecution was able to establish the elements of illegal possession of dangerous drugs and whether the prosecution was able to show an unbroken chain of custody of the seized dangerous drugs are factual in nature and, hence, not proper subjects of a petition for review on certiorari under Rule 45.

Anent the petitioner's contention that the CA erred in convicting him for violation of Section 11, Article II of R.A. 9165 in conspiracy with Saunar, this Court finds the same utterly specious. First, an astute perusal of the April 29, 2009 Decision of the CA and the September 25, 2007 Joint Judgment of the RTC of Ligao City would show that the circumstance of conspiracy was not, in any manner, appreciated by the said courts against the petitioner. What the said courts held was that both the petitioner and Saunar were separately found in possession of dangerous drugs making them each liable under R.A. 9165.

Second, contrary to the tenor of the petitioner's argument, the crime of conspiracy to commit possession of dangerous drugs does not exist. Simply put, the circumstance of conspiracy is not appreciated in the crime of possession of dangerous drugs under Section 11, Article II of R.A. 9165. The fact that the Information for violation of Section 11, Article II of R.A. 9165 that was filed against the petitioner and Saunar alleged that they "conspired and helped each other" is immaterial. In any case, the said Information sufficiently alleged that the petitioner and Saunar were caught in possession of dangerous drugs, contrary to Section 11, Article II of R.A. 9165.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Bernabe, JJ.[*] concur.

[*]Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Remedios Salazar-Fernando and Ramon R. Garcia, concurring; rollo, pp. 38-53.

[2] Id. at 55-56.

[3] Id. at 58-79.

[4] Supra note 1.

[5] Supra note 2.

[6] RULES OF COURT, Rule 45, Section 2.

[7] Rollo, p. 2.

[8] Philippine National Bank v. Deang Marketing Corporation, G.R. No. 177931, December 8, 2008, 573 SCRA 312, 316.

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