

CARLOS A. DIMAANDAL, PETITIONER, V. P02 REXY S. ILAGAN AND P02 EDENLY V. NAVARRO, RESPONDENTS.*G.R. No. 202280. December 07, 2016*

Ponente: BRION, J.

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We resolve the petition for review on certiorari[1] assailing the August 31, 2011 decision[2] and the May 29, 2012 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 113236. The CA denied the petition for review filed by petitioner Carlos Dimaandal (Dimaandal), challenging the November 20, 2009 decision[4] and the February 24, 2010 order[5] of the Regional Trial Court (RTC) in Special Civil Case No. 1-2009 which dismissed his petition for certiorari for lack of merit.

The Factual Antecedents

On May 20, 2009, the Municipal Circuit Trial Court (MCTC) of Taal-San Nicolas, Batangas, convicted Dimaandal of the crime of resistance and disobedience to an agent of a person in authority under Article 151 of the Revised Penal Code, and sentenced him to suffer the penalty of imprisonment of three (3) months and to pay a fine of One Hundred and Fifty Pesos (P150.00).[6] A copy of the MCTC decision was received by Dimaandal's former counsel, Atty. Josephine A. Concepcion (Atty. Concepcion) on the same day.[7]

On June 4, 2009, Dimaandal, thru Atty. Concepcion, filed a motion for reconsideration, but the MCTC denied the motion in its order dated July 9, 2009.[8] Following the denial, Atty. Concepcion filed a notice of appeal with the MCTC on July 17, 2009, insisting that under the "fresh period rule," Dimaandal had fifteen (15) days from July 13, 2009 (the date of receipt of the July 9, 2009 order), within which to perfect his appeal.[9]

The MCTC denied the notice of appeal for having been filed out of time.[10] It also denied Dimaandal's motion for reconsideration for lack of merit and declared the May 20, 2009 decision final and executory.[11] Accordingly, the MCTC ordered the issuance of a warrant of arrest against Dimaandal for his service of the sentence.

Atty. Concepcion thus filed a petition for certiorari under Rule 65 of the Rules of Court before the RTC, with prayer for the issuance of a temporary restraining order and preliminary injunction, questioning the propriety of the MCTC's denial of Dimaandal's appeal.[12]

In its decision dated November 20, 2009, the RTC dismissed the petition for lack of merit.[13] It held that Dimaandal lost his right to appeal when he failed to file, his notice of appeal on time. It likewise denied the motion for reconsideration filed by Dimaandal in its order dated February 24, 2010.[14]

As a consequence, Atty. Concepcion filed a petition for review under Rule 42 of the Rules of Court before the CA, seeking to nullify the RTC's November 20, 2009 decision and February 24, 2010 order.[15]

In its decision dated August 31, 2011, the CA denied the petition for review and affirmed the RTC's assailed

decision and order. It noted that Dimaandal's filing of a motion for reconsideration before the MCTC did not toll the running of the period to appeal the May 20, 2009 decision, as such motion is a prohibited pleading in criminal cases covered by the Revised Rules on Summary Procedure. Thus, when Dimaandal filed his notice of appeal, the period to perfect his appeal had already lapsed. The MCTC, therefore, properly denied the appeal for having been filed out of time.

The CA also pointed out that the proper remedy for the RTC's dismissal of Dimaandal's petition for certiorari is to file an ordinary appeal under Rule 41 of the Rules of Court and not a petition for review under Rule 42, which governs appeals from a decision of the RTC in the exercise of its appellate jurisdiction.

Dimaandal, this time with the assistance of his new counsel, Atty. Bernardo C. Cabido, moved for reconsideration and raised for the first time the issue of Atty. Conception's gross negligence in filing a prohibited pleading before the MCTC and in failing to file his notice of appeal within the fifteen-day reglementary period. The CA, however, denied his motion for lack of merit in its resolution dated May 29, 2012.[16]

Thereafter, Dimaandal filed the present petition for review on certiorari before the Court on August 3, 2012, assailing the CA's August 31, 2011 decision and May 29, 2012 resolution.

In the present petition, Dimaandal admits that the CA correctly affirmed the MCTC's denial of his appeal for having been filed out of time. The only issue he raises for the Court's resolution is whether he is bound by the negligence of his former counsel whose procedural lapses, i.e., the filing of a prohibited pleading before the MCTC and the belated filing of his notice of appeal, resulted in the denial of his right to due process of law.[17] He thus prays that the Court relax its rules of procedure and order that his appeal be given due course.

The Court's Ruling

We DENY the petition for review on certiorari as we find no reversible error committed by the CA in issuing its assailed decision and resolution.

At the outset, we reiterate the well-settled rule that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency, or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time is barred by estoppels.[18]

Note that this principle forbids parties from changing their theory of the case.[19] A party, after all, is bound by the theory he adopts and by the cause of action he stands on, and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.[20]

In the present case, Dimaandal raised the issue on his former counsel's gross neglect for the first time in his motion for reconsideration before the CA, after the latter affirmed the RTC's finding on the proper dismissal of Dimaandal's appeal before the MCTC for having been filed out of time. The CA, therefore, correctly dismissed the motion for reconsideration for lack of merit, as it is barred from taking cognizance of an issue raised for the first time on appeal.[21]

At any rate, there is no merit in Dimaandal's claim that he is not bound by the mistakes of his former counsel.

The general rule is that the client is bound by the negligence and mistakes of his counsel. The only exception would be where the lawyer's gross negligence would result in the grave injustice of depriving his client of the due process of law.[22] A departure from this rule would bring about never-ending suits, so long as lawyers could

allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by operation of law.[23]

In *Producers Bank of the Philippines v. Court of Appeals*,^[24] the decision of the trial court attained finality due to the failure of the petitioner's counsel to timely file a notice of appeal. The Court ruled that such negligence did not deprive the petitioner of due process of law since it was given the opportunity to advocate its cause or defend its interest in due course. By simply failing to file its appeal within the reglementary period, it could be successfully argued that the petitioner was deprived of its day in court.

Similarly, in the present case, we reject the argument that Dimaandal was denied due process because of the negligence of his counsel who belatedly filed his notice of appeal, precisely because Dimaandal had the opportunity to defend himself in the criminal proceedings against him before the MCTC.^[25]

As shown by the records, Dimaandal was able to actively participate in the proceedings a quo. While he may have lost his right to appeal, he was not denied his day in court. So long as a party is given the opportunity to defend its interests in due course, he would have no reason to complain, for it is the opportunity to be heard that makes up the essence of due process.^[26]

We stress that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege that must be exercised in the manner and in accordance with the provisions of law. One who seeks to avail of the right to appeal must strictly comply with the requirements of the rules; failure to do so, as in Dimaandal's case, leads to the loss of the right to appeal.^[27] The MCTC decision, therefore, became final and executory when Dimaandal failed to file a timely appeal therefrom.

WHEREFORE, we DENY the petition for review on certiorari and AFFIRM the decision dated August 31, 2011 and resolution dated May 29, 2012, of the Court of Appeals in CA-G.R. SP No. 113236.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Mendoza, and Leonen, JJ., concur.

[1] Rollo, pp. 8-19.

[2] *Id.* at 128-136; penned by Associate Justice Magdangal M. De Leon, with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

[3] *Id.* at 158-159.

[4] *Id.* at 106-110; penned by Judge Juanita G. Areta.

[5] *Id.* at 111-112.

[6] *Id.* at 30-34; penned by Presiding Judge Ma. Cecilia L. Saquin-Esperanza.

[7] *Id.* at 129.

[8] *Id.* at 40.

[9] *Id.* at 41.

[10] *Id.* at 70-71.

[11] *Id.* at 76-77.

[12] Id. at 44-54.

[13] Id. at 110.

[14] Id. at 112.

[15] Id. at 89-103.

[16] Id. at 137-145.

[17] Id. at 13-14.

[18] S.C. Megaworld Construction and Development Corporation v. Parada, G.R. No. 183804, September 11, 2013, 705 SCRA 584, 594: citing Besano v. Mayor, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 219.

[19] Bate v. Spouses Veloso, G.R. No. 194270, December 3, 2012, 686 SCRA 758, 767.

[20] Id., citing Arroyo v. House of Representatives Electoral Tribunal, G.R. No. 118597, July 14, 1995, 246 SCRA 384, 403.

[21] See Besana v. Mayor, supra note 18.

[22] Pasiona, Jr. v. Court of Appeals, G.R. No. 165471, July 21, 2008, 559 SCRA 137, 147.

[23] Stanley Fine Furniture v. Gallano, G.R. No. 190486, November 26, 2014, 743 SCRA 306, 325.

[24] G.R. No. 126620, April 17, 2002, 381 SCRA 185. 200.

[25] Supra note 22.

[26] GCP-Manny Transport Services, Inc. v. Principe, G.R. No. 141484, November 11, 2005.

[27] Heirs of Teofilo Gaudiano v. Benemerito, G.R. No. 174247; February 21, 2007.

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