

RUDY GLEO ARMIGOS, PETITIONER, VS. COURT OF APPEALS, CRISTITO MATA, AND JUDGE L. D. CARPIO, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF DAVAO DEL SUR, BRANCH V, R...*G.R. No. 50654. November 06, 1989*

Ponente: PADILLA, J.

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Review on certiorari of the decision[*] of the Court of Appeals, which dismissed the petition filed and docketed therein as CA-G.R.No. SP-07192-R, entitled: "Rudy Gleo Armigos, petitioner, versus Judge L.D. Carpio, respondent" and the resolution denying the motion for reconsideration of said decision.

The undisputed facts are as follows:

The private respondent, Cristito Mata, filed a complaint against the herein petitioner with the Municipal Court of Digos, Davao del Sur, docketed as Civil Case No. 971, for the collection of damages and attorney's fees. After trial, judgment was rendered in favor of the private respondent and against the herein petitioner. A copy of the decision was received by the petitioner on 8 June 1977, and the following day, 9 June 1977, he filed a notice of appeal with the said municipal court, and on 24 June 1977, he completed the other requirements for the perfection of an appeal, including the filing of an appeal bond and the payment of the appellate court docket fee. However, when the case was elevated to the Court of First Instance of Davao del Sur (Branch V) for the consideration of the appeal, the presiding judge thereof ruled that the appeal was filed beyond the reglementary period; consequently, he dismissed the appeal.

Whereupon, the petitioner filed a petition for certiorari, mandamus with preliminary injunction with the Court of Appeals, claiming that from 8 June 1977, when he received a copy of the decision of the municipal court, to 24 June 1977, when he perfected his appeal, only fifteen (15) days had elapsed so that the decision of the Court of First Instance of Davao del Sur, dismissing his appeal for having been filed beyond the reglementary period, is erroneous and contrary to law. The petitioner contended that the computation of the period to appeal should commence on the hour he received copy of the decision, so that the first of the 15-day period comprising 24 hours is from 4:00 o'clock p.m. of 9 June 1977 to 4:00 o'clock p.m. of 10 June 1977 and the last day, from 4:00 o'clock p.m. of 23 June 1977 to 4:00 o'clock p.m. of 24 June 1977.

The Court of Appeals, however, rejected the novel interpretation suggested as it would result in many confusing situations and many unreliable testimonies as to the time a copy of a decision, order or pleading is received, and cited the case of *Republic of the Philippines vs. Encarnacion*,^[1] where this Court held that when a law was to be effective upon approval by the President and the President signed the same on 16 June 1950, the law should be considered to have taken effect not on the exact hour when the President signed the same on 16 June 1950 but from the very first minute or hour of said day of 16 June 1950.

The petitioner filed a motion for reconsideration of the appellate court's decision, but his motion was denied in a resolution promulgated on 7 December 1978.

Hence, the present recourse.

We find no merit in the petition. The rule stated in Article 13 of the Civil Code to the effect that "In computing a period, the first day shall be excluded, and the last day included" is similar, but not identical to Section 4 of the Code of Civil Procedure which provided that "Unless otherwise specially provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; and if the last be Sunday or a legal holiday it shall be excluded," as well as the old Rule 28 of the Rules of Court which stated that "In computing any period of time prescribed or allowed by the Rules of Court, by order of a court, or by any other applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the time shall run until the end of the next day which is neither a Sunday or a legal holiday." In applying this rule, the Court considered the day as synonymous with the date and we find no cogent reason to adopt a different view.

Besides, human memory on dates or days is frail and unless the day is an extraordinary one for a person, there is no reasonable certainty of its correctness. What more for the exact hour when a pleading, order or decision is received by a party?

Petitioner's suggestion, however, may find application in appeals in habeas corpus cases where the law requires that such appeals should be made within 48 hours from notice of judgment.[2]

While it is true that rules of procedure are to be interpreted liberally so that the real matter in dispute may be submitted to the judgment of the court, and that the trial court is vested with discretion to allow or admit an appeal filed out of time, this discretion is not unconditional. There must be justifiable reason to warrant such action, since the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional, and in the absence of any justifying circumstance, the court has no jurisdiction to approve or admit an appeal filed out of time.[3] In the instant case, the petitioner failed to prove, or even claim, that his failure to appeal on time was due to fraud, accident, mistake or excusable negligence.

WHEREFORE, the petition is DENIED. With costs against the petitioner.

SO ORDERED.

Melencio-Herrera (Chairperson), Sarmiento, and Regalado, JJ., concur.

Paras, J., no part. Ponente in CA.

[*]Penned by Justice Edgardo L. Paras, with Justices Ramon G. Gaviola, Jr., and B.S. de la Fuente, concurring.

[1] 87 Phil. 845.

[2] Rule 41, Sec. 18, Rules of Court.

[3] Trans-Philippines, Inc. vs. Court of Appeals, G. R. No. L-42184, July 28, 1977, 78 SCRA 154, 161.

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