

PLUTARCO YUSI AND DAISY YUSI, PETITIONERS, VS. THE HONORABLE JUDGE LETICIA P. MORALES, COURT OF FIRST INSTANCE OF NUEVA ECIJA, RESPONDENT.

G.R. No. 61958. April 28, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

May persons who apply for the benefits of the Probation Law withdraw their application during the period for filing an appeal and ask that their appeal from the judgment of conviction be given due course?

The petitioners are spouses who were convicted for estafa in Criminal Case No. 2260 in a decision of the respondent court dated May 20, 1982. The court sentenced the petitioners ". . . to suffer an indeterminate sentence of FOUR (4) MONTHS of arresto mayor as minimum to ONE (1) YEAR and SIX (6) MONTHS of prision correccional as maximum, to pay P5,400.00 to Naty V. Pagdanganan for the value of the piano, and to pay the costs of the suit."

On June 22, 1982, when the decision dated May 20, 1982 was promulgated, the petitioners appeared in court without their counsel of record. The respondent court appointed a certain Atty. Cesar Villar who happened to be in court to act as petitioners' counsel de oficio during the promulgation. On that occasion, the petitioners through their counsel de oficio manifested that ". . . they are going to avail of the benefits of the Probation Law and prayed that they be released under the same bond." (Annex "B", Rollo p. 14) The court immediately granted the petitioners' prayer ". . . with a condition that the accused will submit within this day a certification from the bonding company that it is willing to accommodate the accused under the same bond for a period of five (5) days beginning today."

On June 23, 1982, the petitioners filed with the respondent court an application for probation under Presidential Decree No. 968 as amended by Presidential Decree No. 1257 (Annex "C", Rollo, p. 15).

Acting on the petitioners' application for probation, the respondent court on the same day, June 23, 1982, issued an Order directing the probation officer of Cabanatuan City to conduct an investigation on the application for probation and to submit his report on the matter within sixty (60) days from receipt in accordance with Sections 5 and 7 of Presidential Decree No. 968 as amended. (Annex "A", Rollo, p. 18).

On June 28, 1982, or seven (7) days from the date of promulgation of the decision and within the reglementary period to file an appeal, the petitioners filed with the respondent court their Notice of Appeal (Annex "E", Rollo, p. 19).

On July 6, 1982, the respondent court issued an Order denying the notice of appeal on the ground that the petitioners waived their right to appeal the decision when they filed their application for probation (Annex "F", Rollo, P. 20).

On July 16, 1982, Atty. Antero Torres filed with the court an appearance as counsel in collaboration with the

petitioners' counsel of record, and on behalf of the petitioners filed a motion for reconsideration of the July 6, 1982 order. On July 24, 1982, the petitioners filed a supplemental motion for reconsideration. (Annexes "G" and "H", Rollo, pp. 21-24).

On August 19, 1982, the respondent court issued an order denying both the motion for reconsideration and the supplemental motion for reconsideration (Annex "J", Rollo, p. 28).

Hence, this petition was filed to set aside the above orders.

In a resolution dated October 11, 1982, we considered the People of the Philippines impleaded and required the Solicitor General to comment on the petition.

Upon the filing of the Solicitor General's comments, which we treated internally as an answer, and dispensing with the filing of briefs or memoranda, we resolved to declare the case submitted for decision.

The only issue is whether or not the petitioners whose application for probation was granted after conviction of the crime of estafa may still withdraw such application for probation and within the reglementary period appeal the judgment of conviction.

In not giving due course to the petitioners' notice of appeal the respondent court relied on paragraph 3, Section 4 of Presidential Decree No. 968 (ESTABLISHING A PROBATION SYSTEM, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES) as amended which considers an application for probation of a convicted accused to be a waiver of his right to appeal or an automatic withdrawal of a pending appeal.

And now, the question before us is whether or not such a waiver or withdrawal is irrevocable.

We rule that it is not. We find the strict and unyielding application of the "waiver rule" under the Probation Law unwarranted.

Under the factual circumstances of the instant case, the respondent court in granting the application for probation and denying the prayer to withdraw, failed to take into account the fact that the petitioners' counsel of record was not present when the petitioners applied for probation. True, they were represented by a counsel de oficio appointed by the court on the spot but the counsel de oficio was not fully acquainted with their case. He could not have considered fully the strength of a possible appeal when he advised them about the effects of the application for probation. More so when we consider the thin line that divides a criminal case for estafa and a civil case for collection of a debt.

And this fact surfaced when, on June 28, 1982 after the petitioners discussed their case with a brother-in-law, Judge Eladio C. Sequi of the Municipal Court of Carranglaan, Nueva Ecija, the petitioners filed their notice of appeal upon the Judge's advice. It must be noted that the notice of appeal was filed just seven (7) days after the promulgation of the decision.

Considering that the application for probation is an admission of guilt on the part of an accused for the crime which led to the judgment of conviction and that the application for probation is considered a waiver upon his part to file an appeal, it is in the best interests of justice that the court should take the necessary steps to insure that the accused has been fully apprised of the full import of his application before the court acts on it.

In the case at bar, the respondent court hastily granted the manifestation and application for probation on June 22, 1982, the same day that the decision was promulgated and approved the formal application the following day without taking steps to be informed that the petitioners were aware of the full import of their application.

Furthermore, Presidential Decree No. 968 which established the Probation System was envisioned among other

things, "to provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence" (Section 2[b], Presidential Decree No. 968).

Under the facts of this case, the petitioners cannot be considered "penitent offenders." They appeared to have improvidently filed their application for probation and should be allowed to withdraw it and to appeal the decision.

We agree with the Solicitor General when he observes that:

.....

"There can be no real reformation of a wrongdoer which is the reason for probation unless there is a willingness on his part to right the wrong he has committed. Probation is envisioned for the accused. He may or may not avail of its benefits. Although probation is founded on consent, waiver and/or contract, public policy requires that interpretational objectives set forth in Section 2 of Presidential Decree No. 968 be given full effect. Probation cannot therefore be forced or compelled on a convict. To permit this would only serve to invite its violation. Instead, a greater emphasis should be exerted in securing the probationer's effective participation in society's major social institution.

"Since 'probation is an island of technicalities surrounded by sea of discretion' (Carl H. Imlay & Charles R. Galsheen, 'See What Condition Your Condition Are In,' Federal Probation, XXXV (June 1971)', it should, therefore, be liberally construed in favor of the accused (herein petitioners). Having opted to discontinue with the application for probation in its initial stages and prior to the submission of a post sentence investigation report and within the period interposed an appeal from the adverse decision, petitioners should be allowed to withdraw their application for probation and pursue their right to appeal therefrom."

The underlying philosophy of probation is indeed one of liberality towards the accused. It is not served by a harsh and stringent interpretation of the statutory provisions. Probation is a major step taken by our Government towards the deterrence and minimizing of crime and the humanization of criminal justice. In line with the public policy behind probation, the right of appeal should not be irrevocably lost from the moment a convicted accused files an application for probation. Appeal and probation spring from the same policy considerations of justice, humanity, and compassion.

WHEREFORE, the petition for certiorari and mandamus is hereby GRANTED. The Orders dated June 23, 1982, July 6, 1982 and August 19, 1982 of the respondent court are nullified and set aside. The respondent court is directed to give due course to the petitioners' notice of appeal.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Relova, JJ., concur.

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