



Republic of the Philippines
Sandiganbayan
 Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on January 18, 2019.

Present:

<i>MA. THERESA DOLORES C. GOMEZ-ESTOESTA</i> -----	<i>Chairperson</i>
<i>ZALDY V. TRESPESES</i> -----	<i>Associate Justice</i>
<i>BAYANI H. JACINTO*</i> -----	<i>Associate Justice</i>

The following resolution was adopted:

SB-12-CRM-0173 – People v. Eleno U. Colinares, Jr.

Before the Court is accused Eleno U. Colinares, Jr.’s “MOTION FOR RECONSIDERATION WITH MANIFESTATION” dated April (sic) 18, 2018 consisting of: (a) a Manifestation explaining his and his counsel’s absence during the promulgation set on November 16, 2018 with prayer for the Court to consider his non-appearance during the promulgation of judgment on November 16, 2018 as an “excusable mistake or negligence on the part of counsel and the accused”; and (2) a Motion for Reconsideration of the judgment of conviction rendered against him.¹ The prosecution, in its “OPPOSITION [TO MOTION FOR RECONSIDERATION ON ORDER DATED 16 NOVEMBER 2018]” dated January 8, 2019,² concentrated on the explanations of the accused stated in his Manifestation while reserving its right to file a comment/opposition to the Motion for Reconsideration in the event that the Court reconsiders its Order dated November 16, 2018.

To recall, the promulgation of judgment was set on November 16, 2018 per Minute Resolution dated May 21, 2018.³ A copy of said Minute Resolution was duly received on June 5, 2018 by Atty. Noel B. Vedad, counsel for the accused, through a certain Rechette Fundador, as shown from the Registry Return Receipt for said mail matter.⁴ As well, a “Produce Order” with the attached May 21, 2018 Minute Resolution was addressed personally to the accused at his last known address and coursed through the Chief of Police of Zamboanga City who received said mail matter on June 7, 2018 per the Registry Return Receipt.⁵ The Return of the “Produce Order” by SPO2 Jessie Ramos contained the notation “cannot be located”.⁶

With the non-appearance of accused and his counsel on November 16, 2018, the judgment of conviction was promulgated *in absentia*. Upon motion by the prosecution, the Court ordered the issuance of a warrant of

* In lieu of J. Hidalgo who is on wellness leave (A.O. No. 022-2019 dated January 17, 2019).
 1 Record, vol. 2, pp. 444-452.
 2 *Id.*, pp. 455-466.
 3 *Id.*, p. 284
 4 *Id.*, p. 385 (dorsal)
 5 *Id.*, p. 386 (dorsal)
 6 *Id.*, p. 408.

arrest against the accused.⁷ A Warrant of Arrest dated November 20, 2018 was thereafter issued against said accused.⁸

On November 29, 2018, the Court received by mail the instant Motion For Reconsideration with Manifestation which accused set for hearing on January 11, 2019. On January 8, 2019, the prosecution filed its opposition to the Motion.

Meantime, per information relayed by the son of the accused during the hearing of the motion on January 11, 2019 and based on the Return of the Warrant of Arrest executed by Atty. Jonimar G. Tongdo, Investigation Agent I, NBI-WEMRO 9, accused was arrested on January 1, 2019 pursuant to the Warrant of Arrest issued on November 20, 2018 and is currently under detention at the CIDG of Camp Batalla, Police Station, Zamboanga City.

DISCUSSION

As accused was absent during the promulgation of judgment set on November 16, 2018, the fourth and fifth paragraphs of Section 6, Rule 120 of the Revised Rules of Criminal Procedure find application, to wit:

Sec. 6. Promulgation of judgment. – xxx

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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 judgment 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.

During the November 16, 2018 setting for promulgation of judgment, the Court determined *prima facie* that accused's failure to attend said setting was without justifiable cause. First, his counsel was duly notified of said setting and it is axiomatic that notice to counsel is deemed notice to the client; thus, in *Javier v. Gonzales*,⁹ the Supreme Court held that the promulgation *in absentia* was validly made because, among others, the accused therein was properly informed of the date of promulgation thru his counsel. Second, accused himself was sent a notice of the setting at his last

⁷ Order dated November 16, 2018 (record, vol. 2, p. 413).

⁸ Record, vol. 2, p. 433.

⁹ G.R. No. 193150, January 23, 2017.

known address. As the return on the Produce Order contains the cryptic notation of "cannot be located", the Court presumes that accused was not personally served with the notice of promulgation as he could not be located at his given address. In *Jaylo v. Sandiganbayan*,¹⁰ the Supreme Court held that even if it were to assume that the accused therein failed to appear during promulgation due to his failure to receive notice thereof, such was not a justifiable reason as he should have filed a notice of change of address before the Sandiganbayan.

For the foregoing reasons, the Court granted the prosecution's motion for promulgation *in absentia* and for the issuance of a warrant of arrest against him.

The accused is now before the Court with the explanation that his non-appearance was due to an excusable mistake or negligence on his part and that of his counsel. The prosecution opposes the motion and argues in relevant part that accused failed to provide a reasonable explanation and a justifiable cause for his and his counsel's absence during the promulgation.

Unfortunately for the accused, the Court no longer has authority or discretion to give due course to his prayer for the reconsideration of the Order dated November 16, 2018 and the Decision promulgated on November 16, 2018 as he has lost all remedies under the law due to his failure to comply with the mandatory provisions of Section 6, Rule 120 to surrender before the Court and to move for leave to avail of remedies within 15 days from promulgation of judgment.

Indeed, as explained in *Villena v. People*,¹¹ the accused who failed to appear at the promulgation of the judgment of conviction shall lose the remedies available under the Rules of Court against the judgment -- (a) the filing of a motion for new trial or reconsideration (Rule 121), and (b) an appeal from the judgment of conviction (Rule 122).

The reason for the foregoing rule is simple. When an accused on bail fails to present himself at the promulgation of a judgment of conviction, he is considered to have lost his standing in court.¹² Without any standing in court, the accused cannot invoke its jurisdiction to seek relief.¹³

To regain his standing in Court and in order to avail of the foregoing remedies, *Villena* explained further that accused must (1) surrender and (2) file a motion for leave of court to avail of these remedies, stating therein the reasons for his absence, within 15 days from the date of promulgation of judgment.¹⁴ This was reiterated in *Jaylo v. Sandiganbayan*¹⁵ where the High

¹⁰ G.R. Nos. 183152-54, January 21, 2015.

¹¹ G.R. No. 184091, 31 January 2011, 641 SCRA 127.

¹² *Jaylo v. Sandiganbayan*, *supra* note 10.

¹³ *Id.*

¹⁴ *Supra* note 11, p. 135 (emphasis and underscoring supplied)

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Court held that in order for the accused to regain standing in court, he must do as follows: 1) surrender **and** 2) file a motion for leave of court to avail of the remedies, stating the reasons for their absence, within 15 days from the date of the promulgation of judgment.

The term “surrender” contemplates the act by the convicted accused of physically and voluntarily submitting themselves to the jurisdiction of the court to suffer the consequences of the judgment against them.¹⁶ In this case, accused never surrendered within the contemplation of law within 15 days from promulgation. The act of filing a Motion for Reconsideration cannot be considered an act of surrender.¹⁷

Moreover, the rule is that upon surrender, the accused must request permission of the court to avail of the remedies by making clear the reasons for his failure to attend the promulgation of the judgment of conviction.¹⁸ In this case, accused did not seek leave to avail of post-conviction remedies but merely asked, through a manifestation, for the Court to consider his non-appearance as an excusable mistake or negligence on his part and on the part of his counsel.

Not having complied with the requirements of a valid surrender and a proper motion to avail of post-conviction remedies, accused has not gained his standing in Court which means that the Decision attained finality 15 days following its promulgation on November 16, 2018.¹⁹ In view thereof, this Court no longer has the power to conduct a review of said Decision. Such is no longer subject to change, revision, amendment or reversal.²⁰ Thus, there is no need to pass upon the issues raised by the accused in his Motion for Reconsideration.

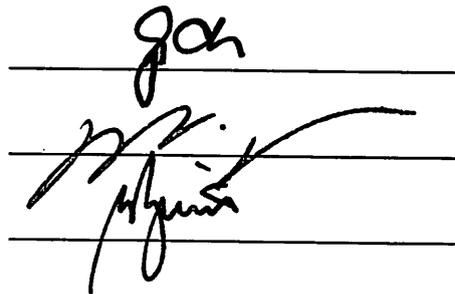
WHEREFORE, premises considered, accused Eleno U. Colinares, Jr.’s “MOTION FOR RECONSIDERATION WITH MANIFESTATION” dated April (sic) 18, 2019 is **DENIED**.

SO ORDERED: 

GOMEZ-ESTOESTA, J., Chairperson

TRESPESES, J.

JACINTO, J.



¹⁵ *Supra* note 10 citing *Villena v. People*, *supra* note 11 and *People v. De Grano*, 606.Phil. 547 (2009)

¹⁶ *Id.*

¹⁷ See *Jaylo v. Sandiganbayan*, *supra* note 10.

¹⁸ *Id.*

¹⁹ See *Jaylo v. Sandiganbayan*, *supra* note 10 and *Villena v. People*, *supra* note 11 at 135.

²⁰ See *Jaylo v. Sandiganbayan*, *supra* note 10