

Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 7 May 2019.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA----- Chairperson
Justice ZALDY V. TRESPESES----- Member
Justice GEORGINA D. HIDALGO----- Member

The following resolution was adopted:

Crim. Case No. 26352-26353- People vs. FRANCISCO REYES, et al.

This resolves the following:

1. Accused Dickson Lim's Very Urgent Ex-Parte Motion for Furlough dated 6 May 2019.

TRESPESES, J.

This resolves the Very Urgent Ex-Parte Motion for Furlough filed by accused Dickson Lim, through counsel, praying that he be allowed furlough and go home until 9 May 2019.

In support of the said motion for furlough, accused Dickson Lim alleges that he is suffering from several illnesses and that he is regularly taking various medicines which are kept in a safe place in his house that only he knows where to find them. Without the said medicines, his health would be in great danger. Accused also claims that he needs to get clothes and wind up the affairs in his office, particularly the payment of salaries of his employees, which he alone is managing and the settlement of debts with creditors. Finally, accused Dickson Lim said that he needs to inform his family of his current situation.

At the hearing held today, 07 May 2019, the prosecution registered their opposition to accused's motion. The prosecution, while commiserating with the situation of accused, maintains that since accused failed to avail of the remedies under Section 6 of Rule 120, his motion for reconsideration could not be entertained by the court because his conviction has already become final and executory.

7.
f

The counsel for accused, Atty. Macavinta pleaded to the court to allow his client furlough so that he can see his physicians for his present medical condition.

We resolve to **deny** accused Dickson Lim's motion for lack of merit.

It should be noted that accused was already convicted for the offense charged against him. Basic is the rule that a judgment of conviction justifies detention of an accused as a valid curtailment of his right to provisional liberty.¹ In *People v. Jalosjos*,² the Supreme Court emphasizes the nature and consequences of imprisonment, thus:

Imprisonment is the restraint of a man's personal liberty; coercion exercised upon a person to prevent the free exercise of his power of locomotion.

More explicitly, "imprisonment" in its general sense, is the restraint of one's liberty. As a punishment, it is restraint by judgment of a court or lawful tribunal, and is personal to the accused. The term refers to the restraint on the personal liberty of another; any prevention of his movements from place to place, or of his free action according to his own pleasure and will. Imprisonment is the detention of another against his will depriving him of his power of locomotion and it "[is] something more than mere loss of freedom. It includes the notion of restraint within limits defined by wall or any exterior barrier."

In view of the conviction of accused Dickson Lim, consequently, his freedom of movement must be restricted. Although in certain cases, convicted prisoners are allowed furlough, accused in this case has failed to show compelling reason or urgent necessity to allow him to leave detention. To allow accused to go home only to get his medicines and wind up the affairs in his office are not legal grounds for the furlough prayed for.

However, the Court is not insensitive to the current medical situation of accused as manifested by him through the subject motion for furlough and understands that his health is of utmost importance. It should be noted that currently, accused is under the custody of the Sandiganbayan pending the filing of his intended motion for reconsideration (as manifested by his counsel in open court at the hearing held last 06 May 2019) on the order of the court denying his motion for reconsideration on the 12 April 2019 Decision. Said motion, with the express agreement of the prosecution is set for hearing on 09 May 2019. Thus, in the meantime, accused may be allowed to undergo a medical check-up by the Court's physician or that of his choice while under the custody of the Sandiganbayan to assess his medical condition upon proper manifestation.

¹ *Trillanes IV v. Pimentel*, 578 Phil. 1002-1021, (2008).

² 381 Phil. 690-713 (2000).

i.
11

The Court does not find as meritorious accused's argument that he needs to be given the furlough so that he can access his medicines as they "are kept (by the accused) in a safe place in his house and that only he knows where to find them".³ This predicament could easily be remedied by allowing accused to communicate with his family, through phone calls – either by mobile or landline – or through his counsel to access those medicines. Such access through communication lines should be within the Court's premises and subject to supervision of Court personnel. The same applies to his prayer for he needs "clothing materials for his detention".⁴

With respect to accused's allegation that he "needs to wind up his affairs in his office, particularly the payment of salaries of his employees which he alones is managing (and) he needs to settle some debts with creditors",⁵ such as payment of salaries to employees and debts to creditors, the same does not present a compelling reason for this Court to allow his furlough. This task may be delegated to a responsible member of his family or to someone he trusts through telephone communication (mobile or landline) or even through his counsel.

At this point in time, accused Dickson Lim is already a convicted person under the custody of the law who has lost his right to avail of remedial measures when he failed to file the necessary motion within 15 days after the promulgation of a judgment *in absentia* convicting him of the crime as charge. The Court is merely complying with the ruling in *Jaylo v. Sandiganbayan*⁶ where the Supreme Court expounded on Section 6 of Rule 120, as follows:

Section 6, Rule 120, of the Rules of Court, does not take away *per se* the right of the convicted accused to avail of the remedies under the Rules. It is the failure of the accused to appear without justifiable cause on the scheduled date of promulgation of the judgment of conviction that forfeits their right to avail themselves of the remedies against the judgment.

It is not correct to say that Section 6, Rule 120, of the Rules of Court diminishes or modifies the substantive rights of petitioners. It only works in pursuance of the power of the Supreme Court to "provide a simplified and inexpensive procedure for the speedy disposition of cases." This provision protects the courts from delay in the speedy disposition of criminal cases — delay arising from the simple expediency of nonappearance of the accused on the scheduled promulgation of the judgment of conviction.

In this case, petitioners have just shown their lack of faith in the jurisdiction of the Sandiganbayan by not appearing before it for the promulgation of the judgment on their cases. Surely they cannot later on

³ Records Vol. 10, p. 505.

⁴ Id.

⁵ Id. at 506

⁶ G.R. Nos. 183152-54, 21 January 21, 2015.

7-
10

expect to be allowed to invoke the Sandiganbayan's jurisdiction to grant them relief from its judgment of conviction.

It is incumbent upon the accused to show justifiable cause for their absence at the promulgation of the judgment of conviction.

According to petitioners, even if we were to apply Section 6, Rule 120, the conditions under which an accused loses the remedies available in the Rules of Court do not obtain in this case. It is argued that for the provision to apply, it must be shown that 1) the accused was notified of the scheduled date of promulgation, and that 2) the accused failed to appear at the promulgation of the judgment of conviction without justifiable cause.

Petitioners insist that the Sandiganbayan did not bother to determine whether their absence at the promulgation of judgment was without justifiable cause. In other words, as petitioners would have it, it was incumbent upon the Sandiganbayan to take pains to find out whether their absence at the promulgation was without justifiable cause, and only then could the court conclude that petitioners have lost the remedies available in the Rules of Court against the judgment of conviction.

It is well to note that Section 6, Rule 120, of the Rules of Court also provides the remedy by which the accused who were absent during the promulgation may reverse the forfeiture of the remedies available to them against the judgment of conviction. In order to regain their standing in court, the accused 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.

In *Villena v. People*, we stated that 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. Upon surrender, the accused must request permission of the court to avail of the remedies by making clear the reasons for their failure to attend the promulgation of the judgment of conviction.

Clearly, the convicted accused are the ones who should show that their reason for being absent at the promulgation of judgment was justifiable. If the court finds that the reasons proffered justify their nonappearance during the promulgation of judgment, it shall allow them to avail of the remedies. Thus, unless they surrender and prove their justifiable reason to the satisfaction of the court, their absence is presumed to be unjustified.

At this point in time, to the Court accused Dickson Lim is considered to be a prisoner serving a final sentence. As such, restrictions to his liberties are

7
11

imposed and are in force. In *Pangilinan v. Cayetano*⁷, citing *People v. Hon. Maceda* is enlightening on the matter:

People v. Hon. Maceda was specific about the restraints on the exercise of a profession, engagement in a business or occupation, and/or holding of office arising from imprisonment whether because of preventive detention or in the course of serving a sentence upon conviction:

As a matter of law, when a person indicted for an offense is arrested, he is deemed placed under the custody of the law. He is placed in actual restraint of liberty in jail so that he may be bound to answer for the commission of the offense. *He must be detained in jail during the pendency of the case against him, unless he is authorized by the court to be released on bail or on recognizance.* Let it be stressed that *all prisoners whether under preventive detention or serving final sentence can not practice their profession nor engage in any business or occupation, or hold office, elective or appointive, while in detention.* This is a necessary consequence of arrest and detention. (Emphasis supplied and citations omitted)

WHEREFORE, premises considered, accused Dickson Lim's Very Urgent Ex-Parte Motion for Furlough until 9 May 2019 is hereby **DENIED** for want of legal basis.

SO ORDERED.

Quezon City, Philippines.


ZALDY V. TRESPESES
Associate Justice

WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson


GEORGINA D. HIDALGO
Associate Justice

⁷ G.R. Nos. 238875 & 239483 (Notice), 07 August 2018.