



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-20-A/R-0026
Plaintiff-Appellee,

Present

- versus -

MANUEL C. FELICIA,
Accused-Appellant.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

OCT 18 2022 

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused-appellant Manuel C. Felicia's *Motion for Reconsideration*,¹ and plaintiff-appellee's *Comment (on Accused-Appellant's Motion for Reconsideration dated 30 June 2022)*.²

In the Resolution dated March 4, 2022,³ the Court directed accused-appellant to file his brief within thirty (30) days from receipt. Thereafter, not having received the said brief, the Court, in the Resolution dated June 3, 2022,⁴ dismissed the present appeal for accused-appellant's failure to file his brief within the time prescribed by the Rules.

In his *Motion for Reconsideration*, accused-appellant now prays that the Court reconsider, lift, and set aside the Resolution dated June

¹ Dated June 30, 2022; Record, pp. 74-87

² Dated August 30, 2022

³ Record, p. 63

⁴ Record, pp. 69-70

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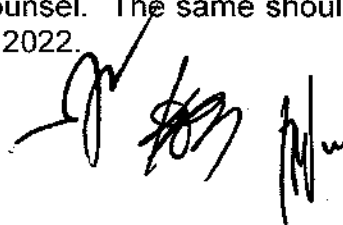
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3, 2022, and that he be given a fresh period of thirty (30) days or until July 30, 2022 within which to prepare and submit his brief. He avers:

1. His failure to submit the appellant's brief was not deliberate.
 - a. His counsel received the Resolution dated March 4, 2022 and wrote the marginal note "Appellant's Brief" thereon. As routinely practiced in the office, the same was forwarded by the File Clerk to the Paralegal, together with the case folder, for the drafting of the appropriate pleading.
 - b. The File Clerk put the records in order by inserting the copy of the Resolution dated March 4, 2022 next to the copy of the judgment. However, without scanning the records, the said Resolution was not noticeable, and the appellant's brief was forgotten.
 - c. His counsel remembered about the appellant's brief only on June 16, 2022, upon receiving a copy of the Notice of Resolution dated June 3, 2022 dismissing the present appeal.
2. He is at serious risk of being incarcerated, and possibly for the remaining years of his life, and thus, he wishes to be heard one more time by the Court, hoping to get a collective and fair assessment of his case.

In its *Comment*, plaintiff-appellee counters:

1. The failure to file a brief, though not jurisdictional, results in the abandonment of the appeal which may be the cause for its dismissal. The right to appeal is not a natural right, but a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of the law.
2. Atty. Mordeno received the Resolution dated March 4, 2022, and even wrote thereon the marginal note "Appellant's Brief." Therefore, he was fully aware of the need to file an appellant's brief. Despite such knowledge, he failed to file one. Forgetting to do so is no excuse. He did not even show in his MR that he was preoccupied with equally important cases at the time.
3. The OSP received a mail copy of the *Appellant's Brief* dated August 1, 2022 on August 30, 2022. Assuming that it was mailed on August 1, 2022, the same did not cure the omission of accused-appellant and his counsel. The same should have been filed on or before April 11, 2022.



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4. Accused-appellant cannot totally put the blame on his counsel's negligence. Had he exercised due diligence in pursuing his appeal and closely coordinated with his counsel, his counsel's omission could have been avoided.

In the Resolution dated September 9, 2022, this Court directed accused-appellant to submit proof of the dates of the filing of his instant *Motion for Reconsideration* and his *Appellant's Brief* dated August 1, 2022. The Court received accused-appellant's *Compliance*⁵ on October 11, 2022.

THE COURT'S RULING

The Court resolves to grant accused-appellant's *Motion for Reconsideration*.

According to accused-appellant, he received a copy of the Resolution dated June 3, 2022 on June 16, 2022. Although the stamp on the envelope used for his instant *Motion for Reconsideration* shows that the post office in Cagayan de Oro City received the same on July 20, 2022, the Post Office Registry Receipt bearing No. RE 572 614 090 ZZ⁶ would show that it was posted on June 30, 2022. Thus, it appears that the instant *Motion for Reconsideration* was filed within the reglementary period for filing a motion for reconsideration.⁷

Concerning the merits of accused-appellant's *Motion for Reconsideration*, Sec. 8, Rule 124 of the Rules of Court provides that the appellant's failure to file a brief within the time prescribed in Rule 124 is a ground for the dismissal of the appeal. *Viz.:*

Sec. 8. Dismissal of appeal for abandonment or failure to prosecute. – The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de officio*.

⁵ Dated September 15, 2022 and filed by registered mail on September 16, 2022. The Court received an advance electronic copy by electronic mail on September 16, 2022.

⁶ Annex A of accused-appellant's *Compliance* dated September 15, 2022

⁷ *Rules of Court. Rule 124, Sec. 16. Reconsideration.* – A motion for reconsideration shall be filed within fifteen (15) days from notice of the decision or final order of the Court of Appeals, with copies thereof served upon the adverse party, setting forth the grounds in support thereof. The mittimus shall be stayed during the pendency of the motion for reconsideration. No party shall be allowed a second motion for reconsideration of a judgment or final order.

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The Court of Appeals, may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal.

In *Diaz v. People*,⁸ however, it was held that the use of the word "may" indicates that the dismissal of an appeal is not mandatory, but discretionary. The pertinent portion of the Supreme Court's Decision reads:

Under Section 7, Rule 44 of the *Rules of Court*, the appellant is required to file the appellant's brief in the CA "within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee." Section 1(e) of Rule 50 of the *Rules of Court* grants to the CA the discretion to dismiss an appeal either *motu proprio* or on motion of the appellee should the appellant fail to serve and file the required number of copies of the appellant's brief within the time provided by the *Rules of Court*.

The usage of the word *may* in Section 1(e) of Rule 50 indicates that the dismissal of the appeal upon failure to file the appellant's brief is not mandatory, but discretionary. Verily, the failure to serve and file the required number of copies of the appellant's brief within the time provided by the *Rules of Court* does not have the immediate effect of causing the outright dismissal of the appeal. This means that the discretion to dismiss the appeal on that basis is lodged in the CA, by virtue of which the CA may still allow the appeal to proceed despite the late filing of the appellant's brief, when the circumstances so warrant its liberality. In deciding to dismiss the appeal, then, the CA is bound to exercise its sound discretion upon taking all the pertinent circumstances into due consideration.

Although the aforequoted ruling of the Supreme Court pertains to Sec. 1(e),⁹ Rule 50 of the Rules of Court, the same may apply to Sec. 8 of Rule 124 because both provide that the appellant's failure to file a brief within the prescribed period is a ground for the dismissal of an appeal.

⁸ G.R. No. 180677, February 18, 2013

⁹ Sec. 1. *Grounds for dismissal of appeal.* - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds: x x x (e) Failure of the appellant to serve and file the required number of copies in his brief or memorandum within the time provided by these Rules; x x x

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Here, accused-appellant filed his *Appellant's Brief* dated August 1, 2022,¹⁰ albeit without a motion for leave,¹¹ before the Court ruled on his instant *Motion for Reconsideration*, and without requesting for further extension. This indicates that he did not intend to abandon his appeal. The interest of substantial justice will be better served if the Court decides the present case on the merits, especially considering that accused-appellant's liberty is at stake.

To prevent causing further delay in the proceedings, the Court also resolves to admit the said *Appellant's Brief*.

WHEREFORE, accused-appellant's *Motion for Reconsideration* is hereby GRANTED. The Resolution dated June 3, 2022 is SET ASIDE, and the *Appellant's Brief* dated August 1, 2022 is ADMITTED.

Plaintiff-appellee is given thirty (30) days from receipt of this Resolution to file its brief.

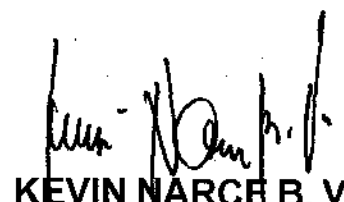
Accused-appellant's *Compliance* is hereby NOTED.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL E. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁰ Record, pp. 89-141

¹¹ 2019 Amendments to the 1997 Rules of Civil Procedure. Rule 15, Sec. 10. *Motion for Leave*. – A motion for leave to file a pleading or motion shall be accompanied by the pleading or motion sought to be admitted.