



Republic of the Philippines

**Sandiganbayan**

Quezon City

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**SEVENTH DIVISION**

*MINUTES of the proceedings held on 14 November 2023.*

*Present:*

*Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson*

*Justice ZALDY V. TRESPESES ----- Associate Justice*

*Justice EDGARDO M. CALDONA<sup>1</sup> ----- Associate Justice*

*Crim. Case No. SB-15-CRM-0092 to 0093- People vs. MARIANO M. MALONES, et al.,*

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**TRESPESES, J.**

Submitted for the court's consideration is accused Mariano M. Malones's (Malones) "Motion to Dismiss" dated 27 October 2023.<sup>2</sup>

**BRIEF BACKGROUND**

The pertinent background facts are detailed in the court's Resolution dated 13 June 2023<sup>3</sup> and are summarized as follows:

Accused Malones and Edna Madarico (Madarico) filed a motion to dismiss the cases against them on the ground of inordinate delay, which the Sandiganbayan denied. They then questioned the Sandiganbayan's ruling by filing a Rule 65 Petition with the Supreme Court, which was docketed as G.R. Nos. 226887-226888.

Meanwhile, after continuing the trial of the cases when no injunction was issued against it, the Sandiganbayan promulgated a Decision dated 23 October 2020,<sup>4</sup> convicting Malones and Ma. Theresa Tan Delos Reyes (Delos Reyes), and acquitting Madarico of the charges.

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<sup>1</sup> Per A.O. No. 287-2023 dated 13 November 2023, in lieu of Associate Justice Georgina D. Hidalgo, who is on leave.

<sup>2</sup> Record, Vol. 6, pp.340-347.

<sup>3</sup> Record, Vol. 6, pp. 118-126.

<sup>4</sup> Record, Vol. 4, pp. 505-506.

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On 12 and 19 January 2021, the Sandiganbayan gave due course to the respective Notices of Appeal filed by Malones<sup>5</sup> and Delos Reyes,<sup>6</sup> and elevated the entire record of the cases to the Supreme Court. In turn, the Supreme Court had docketed the appeal as G.R. No. 255048.

Thereafter, the Supreme Court in G.R. Nos. 226887-226888 issued a Decision dated 20 July 2022<sup>7</sup> granting Malones and Madarico's Rule 65 petition and ordering the dismissal of the cases against them on the ground of inordinate delay.

Upon receipt of the Entry of Judgment<sup>8</sup> of the Supreme Court's 20 July 2022 Decision in G.R. Nos. 226887-226888, accused Malones filed with this court a Manifestation and Motion to Dismiss<sup>9</sup> the cases.

In its 13 June 2023 Resolution,<sup>10</sup> the court merely noted this Manifestation and Motion on the ground that the Sandiganbayan's jurisdiction over the cases has already been transferred to the Supreme Court, when accused's appeal was perfected.

**ACCUSED MALONES'S MOTION TO DISMISS**

In his motion, accused Mariano M. Malones (Malones) recaps that when his Petition for Certiorari was granted, he filed a Motion to Dismiss the cases herein. However, his motion was merely noted on the ground that accused's appeal from his conviction is still pending with the Supreme Court, which has jurisdiction over the appealed case.

Accused Malones states that he then filed a Withdrawal of Appeal<sup>11</sup> with the Supreme Court, a copy of which was attached to the instant motion.

In his Withdrawal of Appeal with the Supreme Court, Malones argues that his appeal may be withdrawn as a matter of right considering that no appellee's brief has yet been filed, as provided under Section 3, Rule 50 of the Rules of Court.<sup>12</sup>

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<sup>5</sup> Record, Vol. 6, p. 17.

<sup>6</sup> Record, Vol. 6, p. 18.

<sup>7</sup> Record, Vol. 6, pp. 108-115.

<sup>8</sup> Record, Vol. 6, p. 102.

<sup>9</sup> Record, Vol. 6, pp. 100-102.

<sup>10</sup> Record, Vol. 6, pp. 118-126.

<sup>11</sup> Record, Vol. 343-345.

<sup>12</sup> Sec. 4. Withdrawal of appeal. — An appeal may be withdrawn as of right at any time before the filing of appellee's brief. After that brief is filed the withdrawal may be allowed by the court in its discretion. The withdrawal of an appeal shall have the same effect as that of a dismissal in accordance with section 2 of this rule.

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Malones claims that the Supreme Court granted his prayer in its Notice dated 2 August 2023,<sup>13</sup> a copy of which was likewise attached to the present motion. Pursuant thereto, he prays for the dismissal of the cases at bar in view of the Supreme Court directive.

### OUR RULING

We are constrained to simply note without action accused Malones's Motion to Dismiss.

- 1. The withdrawal of appeal, even as a matter of right, still necessitates the appellate court's approval.***

We note that accused Malones based his motion to dismiss on the strength of Section 3, Rule 50 of the Rules of Court, and on the understanding that his mere filing of the Withdrawal of Appeal *ipso facto* renders his appeal as withdrawn.

It is true that under Section 3, Rule 50 of the Rules of Court, the appellant may withdraw his appeal as a matter of right before the appellee's brief is filed, to wit:

Sec. 4. Withdrawal of appeal. — An appeal may be withdrawn as of right at any time before the filing of appellee's brief. After that brief is filed the withdrawal may be allowed by the court in its discretion. The withdrawal of an appeal shall have the same effect as that of a dismissal in accordance with section 2 of this rule.

However, notwithstanding the above provision, accused Malones's mere filing of a Withdrawal of Appeal does not automatically cause the withdrawal of his appeal.

As part of the orderly administration of justice and in view of its jurisdiction over the case, the court where the appeal is pending must first give its *approval* to the withdrawal of the appeal for the latter to take legal effect. In this case, it is the Supreme Court that has the authority to do so.

In fact, in an administrative matter, the Supreme Court specifically explained that the withdrawal of an appeal as a matter of right under Section 3, Rule 50 of the Rules of Court still needs to be resolved by the court where it is pending:

Respondent attempts to escape liability by invoking Rule 50, Section 3 of the Rules of Court, which states that withdrawal of appeal is a matter

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<sup>13</sup> Record, Vol. 6, pp. 348-349.

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of right before the filing of the appellee's brief. He claims to have honestly believed that the filing of the motion had the effect of withdrawal of appeal. Thinking that the case had been closed and terminated, he forgot all about it. xxx

xxx

Filing a motion to withdraw appeal does not result in automatic withdrawal of the appeal. The next-level court, before which a motion to withdraw appeal is filed, still needs to resolve this motion. A motion prays for a relief other than by a pleading. As the court may either grant or deny a motion, or otherwise defer action on it until certain conditions are met, lawyers have the obligation to apprise themselves of the court's resolution, and not to simply second-guess it.

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xxx Respondent could not safely assume that the case had already been closed and terminated until he received the Court of Appeals resolution on the matter.<sup>14</sup> (Underscoring supplied.)

Clearly, the Supreme Court's approval is still necessary before accused Malones's appeal can be considered withdrawn, even when such withdrawal is made prior to the filing of the appellee's brief.

***2. The Supreme Court has yet to issue a resolution/order allowing /granting accused Malones's Withdrawal of Appeal.***

As further basis for his motion to dismiss, accused Malones also claims that the Notice from the Supreme Court in G.R. No. 255048 dated 2 August 2023 which was issued in response to his Withdrawal of Appeal granted his prayer.:

While Malones is correct in stating that the Supreme Court granted his prayer, it is important to note that Malones's prayer in his Withdrawal of Appeal was merely "that the Withdrawal of the Appeal of Mariano Malones in SB-15-CRM-0092 and SB-15-CRM-0093 be duly NOTED." In accordance therewith, the Supreme Court in the said Notice merely "NOTED" accused Malones's withdrawal of appeal.

Considering that the Supreme Court simply noted the Withdrawal of Appeal filed by Malones but did not indicate therein that the same is granted or allowed, this court cannot conclude that accused Malones's appeal has already been withdrawn.

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<sup>14</sup> In re: CA-G.R. CV No. 94656 v. Mortel, A.C. No. 10117 (Resolution), 25 July 2016.

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**3. *The Sandiganbayan Seventh Division remains without jurisdiction to act on Malones's cases until these are remanded to it by the Supreme Court.***

As previously explained in our 13 June 2023 Resolution,<sup>15</sup> a trial court's jurisdiction over the case is transferred to the appellate court when the party appeals the trial court's judgment. It only reacquires jurisdiction over the case for appropriate action when the appellate court's final decision is entered in the Book of Entries of Judgments and a certified true copy of its judgment or final order is attached to the original record and remanded to the clerk of court from which the appeal was taken, to wit:

There is no question that the Supreme Court had, in fact, dismissed the charges against accused Malones in the present cases. However, *at this point in time*, this court has no authority to act on Malones's particular prayers.

Section 7, Rule 120 of the Revised Rules of Criminal Procedure clearly provides that the trial court may modify or set aside a judgment of conviction upon motion of the accused only before it becomes final or before the appeal is perfected:

Section 7. Modification of judgment. — A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected.

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Corollary, the court loses the power to modify or set aside its judgment of conviction once the appeal is perfected.

From the moment the appeal is perfected and thereafter, the trial court and appellate court's jurisdiction and the duration thereof are further discussed in *Villareal v. People* as follows:

Xxx. Jurisdiction over a case is lodged with the court in which the criminal action has been properly instituted. If a party appeals the trial court's judgment or final order, jurisdiction is transferred to the appellate court. The execution of the decision is thus stayed insofar as the appealing party is concerned. The court of origin then loses jurisdiction over the entire case the moment the other party's time to appeal has expired. Any residual jurisdiction of the court of origin shall cease — including the authority to order execution pending appeal — the moment the complete records of the case are transmitted to the appellate court. Consequently, it is the appellate court that shall have the authority to wield the power to hear, try, and decide the case before it, as well as to enforce its decisions and resolutions appurtenant thereto. That power and authority shall remain with the appellate court until it

<sup>15</sup> Record, Vol. 6, pp. 118-126.

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finally disposes of the case. Jurisdiction cannot be ousted by any subsequent event, even if the nature of the incident would have prevented jurisdiction from attaching in the first place.

According to Article 78 of the Revised Penal Code, "[n]o penalty shall be executed except by virtue of a final judgment." A judgment of a court convicting or acquitting the accused of the offense charged becomes final under any of the following conditions among others: after the lapse of the period for perfecting an appeal; when the accused waives the right to appeal; upon the grant of a withdrawal of an appeal; when the sentence has already been partially or totally satisfied or served; or when the accused applies for probation. When the decision attains finality, the judgment or final order is entered in the book of entries of judgments. If the case was previously appealed to the CA, a certified true copy of the judgment or final order must be attached to the original record, which shall then be remanded to the clerk of the court from which the appeal was taken. The court of origin then reacquires jurisdiction over the case for appropriate action. It is during this time that the court of origin may settle the matter of the execution of penalty or the suspension of the execution thereof, including the convicts' applications for probation.

Xxx (Footnotes omitted.)

In sum, the jurisdiction of the trial court over the case is transferred to the appellate court when the party appeals the trial court's judgment. Even the trial court's residual jurisdiction shall cease the moment the complete records of the case are transmitted to the appellate court.

From this moment on until it finally disposes of the case, it is the appellate court which shall have the authority to wield the power to hear, try and decide the case before it, including the power to enforce its decisions and resolutions appurtenant thereto. It cannot be ousted of jurisdiction by any subsequent event, even if the nature of the incident would have prevented jurisdiction from attaching in the first place.

The court of origin only reacquires jurisdiction over the case for appropriate action when the appellate court's final decision is entered in the Book of Entries of Judgments and a certified true copy its judgment or final order is attached to the original record and remanded to the clerk of court from which the appeal was taken.

In the instant cases, the Sandiganbayan Seventh Division had already transmitted the records of these cases to the First Division of the Supreme Court where the appeal was raffled. This followed as a matter of procedure after the Sandiganbayan Seventh Division convicted accused Malones and Delos Reyes of the crimes charged (but acquitted Madarico) and gave due course to the latter's consequent Notices of Appeal.

Clearly, the jurisdiction over these cases has already been transferred from the Sandiganbayan Seventh Division to the Supreme Court First

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Division. Hence, Sandiganbayan Seventh Division may neither reverse or modify its 23 October 2020 Decision, nor issue a resolution effecting the dismissal of these cases.

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In *Philippine Bank of Communications v. Court of Appeals*, the Supreme Court explained that the trial court may not dismiss an appeal from its own judgment on the ground that it has become moot and academic, because this devolves upon the appellate court:<sup>16</sup>

Xxx (Underscoring and italics in the original. Footnotes omitted.)

Considering all the foregoing, the Sandiganbayan Seventh Division is clearly still bereft of jurisdiction over these cases and does not have any authority to act on accused Malones's present motion to dismiss.

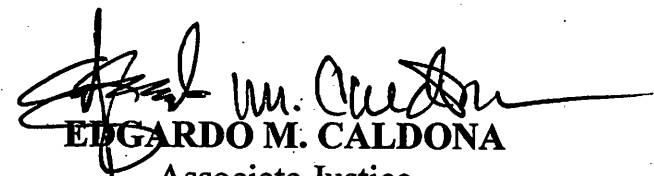
**WHEREFORE**, considering that the Sandiganbayan remains without jurisdiction to act on SB-CRM-0092 to 0093 which was appealed to the Supreme Court where it remains pending, the accused Mariano M. Malones's Motion to Dismiss these cases is merely NOTED.

SO ORDERED.

  
**ZALBY V. TRESPESES**  
Associate Justice

WE CONCUR:

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

  
**EDGARDO M. CALDONA**  
Associate Justice

<sup>16</sup> Record, Vol. 6; pp. 122-125.