REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **20 April 2022** *which reads as follows*:

"UDK-17135 (*Joseph De Vera v. People of the Philippines*). – The Court resolves to:

1. **NOTE** the entry of appearance as collaborating counsel for petitioner Joseph D. De Vera (petitioner) dated June 25, 2021 of Atty. Vitaliano A. Valmoria, together with Atty. Benjamin T. Etulle (who has served his six [6] months suspension from the practice of law since December 2, 2020 but awaiting order to resume his practice), and **DENY** counsel's prayer that he be served with Court processes at 2nd Floor, BIBU Square, National Highway, Tagum City, Davao del Norte, as only the lead counsel is entitled to service of Court processes; and

2. **GRANT** the motion of petitioner for extension of thirty (30) days from the expiration of the reglementary period within which to file a petition for review on *certiorari*.

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated August 10, 2020 and the Resolution[3] dated May 6, 2021 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01760-MIN. In said Decision, the CA dismissed petitioner's appeal for failure to file his Appellant's Brief within the reglementary period, and affirmed the Decision[4] dated June 13, 2017 of the Regional Trial Court of Panabo City, Davao Del Norte, Branch 34 (RTC) in Criminal Case Nos. CrC 395-2011, CrC 396-2011 and CrC 398-2011 finding petitioner and his co-accused Alejandro

[1] *Rollo*, pp. 47-58.
[2] Id. at 9-30. Penned by CA Associate Justice Richard D. Mordeno, and concurred in by Associate Justices Edgardo T. Lloren and Loida S. Posadas-Kahulugan.
[3] *Rollo*, pp. 38-43.
[4] Not attached to the Petition.

G. Lariosa, Jr. (Lariosa; collectively, both accused) guilty beyond reasonable doubt of Violation of Sections 5 and 11, Art. II of Republic Act No. (RA) 9165[5] or the Comprehensive Dangerous Drugs Act of 2002.

Three (3) separate Informations were filed against both accused for violation of RA 9165, as follows:

In Crim. Case No. CrC 395-2011, both accused were charged for violation of Sec. 5 of RA 9165 for selling marijuana. The Information reads:

> That on or about June 2, 2011, in the City of Panabo, Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another without being authorized by law, willfully, unlawfully and knowingly traded, sold and delivered one (1) pack of dried marijuana fruiting tops weighing 5 grams, a dangerous drug, to Agent Hazel B. Ortoyo, who acted as a poseur-buyer in a legitimate buy bust operation taking and receiving one (1) marked money of One Hundred peso (Php 100.00) bill with Serial Number Z424402 with the initials "HBO".
>
> CONTRARY TO LAW.[6]

In Crim. Case No. CrC 396-2011, Lariosa was charged for violation of Sec. 11 of R.A. No. 9165 for possession of marijuana. The Information reads:

> That on or about June 2, 2011, in Panabo City, Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and knowingly had in his possession, control and custody one (1) medium pack of marijuana seeds wrapped in a newspaper with an estimated weight of 70 grams and fifty-four (54) packs of dried marijuana fruiting tops wrapped in a grade 1 notebook marked as the following specimen, to wit:
>
> [List of specimens B to B-53 weighing 5 grams each]
>
> which are dangerous drugs, with an estimated total weight of 340 grams.
>
> Contrary to law.[7]

In Crim. Case No. CrC 398-2011, petitioner was charged for violation of Sec. 11 of R.A. No. 9165 for possession of shabu. The Information reads:

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[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES." Approved on June 7, 2002.
[6] Id. at 10.
[7] Id. at 11-12.

> That on or about June 2, 2011, in Panabo City, Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and knowingly had in his possession, control and custody one (1) small transparent sachet containing *methamphetamine hydrochloride* otherwise known as "shabu" which is a dangerous drugs (*sic*), with an estimated weight of .0251 grams (*sic*).
>
> Contrary to law.[8]

Upon arraignment, both accused pled *not guilty*.[9]

According to the evidence for the prosecution, on June 2, 2011 at around 1:00 p.m., a confidential informant (CI) came to the PDEA office and reported that a certain "Gong-gong" and his cohorts were actively engaged in selling marijuana at Purok 3, Barangay San Francisco, Panabo City (Purok 3). At 2:00 p.m., Agent Clodito Cañada organized a team of eight (8) members and conducted a briefing for a buy-bust operation that designated him as team leader, Agent Hazel Ortoyo-Mandanao (Agent Ortoyo) as poseur-buyer, and Agent Michael Del Rosario (Agent Del Rosario), as immediate back-up and arresting officer. A ₱100.00 bill, which was marked with Agent Ortoyo's initials, "HBO," (marked money) was also prepared.[10]

At around 3:00 p.m., the team, together with the CI, proceeded to Purok 3 and positioned themselves about twenty (20) meters away from the apartment of "Gong-gong." Agent Ortoyo saw petitioner coming out of the apartment. Petitioner approached and greeted them. The CI then introduced Agent Ortoyo to petitioner as the buyer of marijuana. When petitioner asked how much worth of marijuana she wanted to buy, Agent Ortoyo answered that she wanted to buy about one lead which means one small pack of paper worth ₱100.00. Petitioner called Lariosa who came out of the apartment bringing with him one brown pack. Agent Ortoyo overheard petitioner telling Lariosa, "*Tagai ug usa ka lead, Jing* (give her one lead, Jing)." When the exchange of the marijuana and marked money took place, the rest of the team rushed towards the scene. Agent Del Rosario informed both accused of their constitutional rights then frisked them for possible concealed weapons but instead recovered fifty-four (54) packs of dried marijuana fruiting tops as well as one (1) medium pack of suspected marijuana seeds wrapped in a newspaper. Recovered also from petitioner was one (1) small transparent sachet

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[8] Id. at 12.
[9] Id. at 12.
[10] Id. at 12-13.

containing white crystalline substance believed to be *shabu* and the ₱100.00 marked money.[11]

After the arrest, the team marked the seized items inside the apartment in the presence of both accused, and then placed the items in different pouches, and sealed them with masking tapes. It took them three (3) hours marking the seized items individually. Since it was already nighttime and the area started to become a security risk, and with the PDEA office just about 15 minutes away, the team proceeded to their office with both accused and the seized items.[12]

Thereafter, the team conducted the inventory and took photographs of the seized items in the presence of both accused, a representative from the DOJ and an elected public official. They prepared a request for laboratory examination and brought both accused and the items to the PNP Crime Laboratory for examination. At around 9:10 p.m., Officer Maricar Billano received the items and placed their respective weights on the attached masking tapes in the presence of both accused. She then handed them to PSI Virginia Gucor (PSI Gucor), the forensic chemist, whose examination of the contents yielded positive results for marijuana and for shabu. PSI Gucor then turned over all specimens to the evidence custodian for safekeeping.[13]

For its part, the defense presented petitioner, Lariosa, and their neighbor. According to petitioner, he was in Manay, Panabo, at the house of his mother to tend to their banana plantation. On June 2, 2011, he went to the house of the parents of his live-in partner to tell them that he will be taking his children to stay with him in his place because he and his partner already parted ways the year before. He knew Lariosa because the latter's wife and his former live-in partner are siblings. On that day, as he was resting, he heard a commotion outside the house prompting him to go out. It was there that he saw Lariosa and two others dropping to the ground. He did not anymore bother to ask the reason for their arrest because a gun was already pointed at him. Afterwards, they were brought to the PDEA office at the Panabo City Gym.[14]

After trial, the RTC found both accused guilty beyond reasonable doubt of the offenses charged. The dispositive portion of the RTC Decision reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> a) Finding accused *Alejandro G. Lariosa, Jr.* and *Joseph D. Devera* (*sic*)in Criminal Case No. CrC 395-2011 guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165. Accordingly, they

[11] Id. at 13.
[12] Id. at 14.
[13] Id.
[14] Id. at 15.

are both sentenced in this case to suffer the penalty of *life imprisonment* and to pay fine in the amount of [₱]500,000.00;

b) Finding accused *Alejandro G. Lariosa, Jr.* in Criminal Case No. CrC 396-2011 guilty beyond reasonable doubt of violating Section 11 of Republic Act No. 9165 and is accordingly sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum period to thirteen (13) years as maximum period and to pay fine in the amount of [₱]300,000.00; and

c) Finding accused *Joseph D. De Vera* in Criminal Case No. CrC 398-2011 guilty beyond reasonable doubt of violating Section 11 of Republic Act No. 9165 and is accordingly sentenced to suffer an indeterminate penalty of *twelve (12) years and one (1) day* as minimum period to *thirteen (13) years* as maximum period and to pay fine in the amount of [₱]300,000.00.

x x x x

SO ORDERED.

Aggrieved, both accused separately filed their Notices of Appeal. On January 30, 2019, the CA sent them a Notice to File Appellant's Brief which they, through counsels, received on February 8, 2019. However, only Lariosa filed his Brief.[15]

Consequently, the CA dismissed petitioner's appeal for failure to file his Appellant's Brief within the required period of forty-five (45) days from receipt of the notice to file brief pursuant to Sec. 1(c), Rule 50 of the Rules of Court. It also denied Lariosa's appeal for lack of merit.[16]

In moving for reconsideration,[17] petitioner argued that he must benefit from the brief filed by Lariosa on the sole consideration of the allegation that the two of them have acted in conspiracy. He claimed that the pandemic scared him because he is a senior citizen. Further, he argued that the CA committed grave abuse of discretion when it dismissed his appeal *motu proprio* without notice to him as required by Sec. 8, Rule 124 of the Rules of Court. However, the CA denied his motion.[18]

Hence, this Petition.

II

As a preliminary matter, this Court notes that petitioner failed to pay the correct docket and other lawful fees as the Postal Money Order (PMO)

[15] Id. at 41.
[16] Id. at 29-30.
[17] Id. at 31-36.
[18] Id. at 38-43.

was already stale and addressed to the wrong payee and was not shown to have been replaced by petitioner. In addition, there is no verified declaration of electronic submission of the soft copy of the petition, nor is there an affidavit of service attached thereto.

Nonetheless, the emerging trend in the rulings of this Court is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[19] Considering the merits of the case, We find it apt to exercise our power to relax procedural rules in order to facilitate the attainment of justice rather than frustrate it.

As correctly held by the CA, petitioner's argument that he must benefit from the Brief filed by his co-accused must fail for want of legal basis. The only existing related rule is provided for in Sec. 11(a), Rule 122 of the Rules of Court which states that "[a]n appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter." However, this rule is inapplicable to petitioner because he **did** appeal by filing a separate Notice of Appeal, and the assailed judgment of the Court is **not favorable** to him.

As regards the failure of the CA to notify him before dismissing the appeal *motu proprio*, petitioner cites Sec. 8, Rule 124 of the Rules of Court, which provides:

> **Section 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 oficio*. x x x. (Emphasis supplied)

He likewise relies on our pronouncement in *Baradi v. People*[20] (Baradi) where We held that "the Court of Appeals has discretion to dismiss *motu proprio* an appeal for failure on the part of the appellant to file his brief on time, but **the Court of Appeals must have a notice served upon the defendant and appellant of the action to be taken by said court before dismissing *motu proprio* the appeal**. The purpose of such a notice is to give the appellant opportunity to state the reasons, if any, why the appeal should not be dismissed because of such failure, in order that the Court of Appeals may determine whether or not the reasons, if given, are satisfactory."[21]

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[19] *Heirs of Pacaña v. Spouses Masalahit*, G.R. No. 215761, September 13, 2021.
[20] 82 Phil. 297 (1948).
[21] Id. at 298.

Petitioner's reading of *Baradi* is incomplete. In *Baradi*, We instructed that the filing of a motion for reconsideration of, or to set aside, the order dismissing his appeal, in which movant stated the reasons why he failed to file his brief on time, "has cured any defect or failure to comply, if any, with the notice required by said Section 8, Rule 120 [now Rule 124], because if the notice had been given, the same reasons would have been alleged by the appellant."[22] Here, petitioner filed a motion for reconsideration of the dismissal of his appeal, thus curing the failure to comply with the notice requirement.

Petitioner likewise cites *Sapad v. Hon. Court of Appeals,*[23] where We declared that the CA committed grave abuse of discretion in dismissing the appeal on account of failure to file an Appellant's Brief, notwithstanding the filing of a motion for reconsideration which cured the notice defect, because the conduct of therein petitioners' counsel did not merely constitute negligence but bordered on willful and deliberate evasion of his duties to the court and to his clients, resulting in the deprivation of therein petitioners' right to due process.

The rule is that the negligence and mistakes of counsel bind the client. The exception is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[24]

Petitioner contends that his original counsel of record had suffered serious depression due to the latter's suspension and he (petitioner) had no way of following up on his case because he is incarcerated in the Davao Penal Colony (DAPECOL). In other words, there was no deliberate intent not to comply.

Our pronouncement in *Dimarucot v. People*[25] is instructive:

> **Petitioner cannot simply harp on the mistakes and negligence of his lawyer allegedly beset with personal problems and emotional depression. The negligence and mistakes of counsel are binding on the client.** There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the general rule results in the outright deprivation of one's property or liberty through a technicality. However, in this case, we find no reason to exempt petitioner from the general rule. **The admitted inability of his counsel to attend fully and ably to the prosecution of his appeal and other sorts of excuses should have prompted petitioner to be more vigilant in protecting his rights and replace said counsel with a more competent lawyer.** Instead, petitioner continued to allow his counsel to represent him on appeal and even up to this Court, apparently in the hope of

[22] Id.
[23] 401 Phil. 478, 483 (2000).
[24] *Waterfront Cebu City Casino Hotel, Inc. v. Ledesma*, 757 Phil.163, 175 (2015).
[25] 645 Phil. 218 (2010).

moving this Court with a fervent plea for relaxation of the rules for reason of petitioner's age and medical condition. **Verily, diligence is required not only from lawyers but also from their clients.**

Negligence of counsel is not a defense for the failure to file the appellant's brief within the reglementary period. Thus, we explained in *Redeña v. Court of Appeals*:

> In seeking exemption from the above rule, petitioner claims that he will suffer deprivation of property without due process of law on account of the gross negligence of his previous counsel. To him, the negligence of his former counsel was so gross that it practically resulted to fraud because he was allegedly placed under the impression that the counsel had prepared and filed his appellant's brief. He thus prays the Court reverse the CA and remand the main case to the court of origin for new trial.
>
> Admittedly, this Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to present his case (1) where the reckless or gross negligence of counsel deprives the client of due process of law; (2) when application of the rule will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require. None of these exceptions obtains here.
>
> For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. **Here, petitioner's counsel failed to file the appellant's brief. While this omission can plausibly qualify as simple negligence, it does not amount to gross negligence to justify the annulment of the proceeding below.**[26] (Emphases supplied)

While the CA, in its Resolution dated May 6, 2021, characterized petitioner or his counsel's negligence in not filing the Appellant's Brief as "extremely palpable," We do not find such negligence so gross as to exempt petitioner from the general rule that negligence of counsel binds the client. However, We take notice of the fact that petitioner is serving life in prison. As such, he could not be expected to have the capacity to immediately communicate with his counsel.[27]

Moreover, while the CA may dismiss an appeal for failure to timely file the appellant's brief, the dismissal is directory, not mandatory. This is clear from the use of the word "may" in Sec. 8, Rule 124 of the Rules of Court. It is not the ministerial duty of the court to dismiss the appeal. The failure of an appellant to file his brief within the time prescribed does not have the effect

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[26] Id. at 227-228.
[27] *Barayuga v. People*, G.R. No. 248382, July 28, 2020.

of dismissing the appeal automatically. The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[28]

In the case at bench, We find that a relaxation of strict procedural rules is warranted especially considering petitioner's meritorious case as discussed below.

III

It is undisputed that during the inventory of the seized items, only the accused, a representative from the DOJ, and an elected public official were present.[29] Considering that the buy-bust incident occurred prior to the amendment of RA 9165 by RA 10640,[30] the presence of a representative from the media was likewise required during the inventory under Sec. 21(1), Art. II thereof, which provides:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – x x x
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof;
>
> x x x x (Emphasis supplied.)

The chain of custody rule, as embodied in Sec. 21, is a matter of substantive law which cannot be brushed aside as a simple procedural technicality.[31] While failure to strictly comply therewith does not, *ipso facto*, render the seizure and custody over the illegal drugs void and the seized items inadmissible, the final *proviso* of Sec. 21(1), Art. II of RA 9165 requires that (a) there be justifiable ground for such noncompliance; and (b) the integrity and evidentiary value of the seized evidence be preserved.

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[28] *Heirs of Spouses Natonton v. Spouses Magaway*, 520 Phil. 723, 729 (2006).
[29] *Rollo*, p. 14.
[30] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved on July 15, 2014.
[31] *People v. Baptista*, G.R. No. 225783, August 20, 2018.

Here, the only excuse proffered is that "despite earnest efforts and actual attempt to secure a media representative from a local radio station, none of them was available at that time owing to the fact that most of them were on field assignments."[32]

In accepting such excuse, the CA cited *People v. Reyes,*[33] where We held that one of the justifiable grounds that the prosecution may prove is that "media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas."[34] However, such grounds do not even apply to this case which involves a planned buy-bust operation where the presence of the required witnesses could have easily been secured in advance. We can also take judicial notice of the fact that Panabo is part of the Davao Metropolitan Area and is, therefore, not a remote area.

The prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for a sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse.[35]

Absent any justifiable reason in this case for noncompliance with Sec. 21 of RA 9165, the prosecution has failed to establish the identity of the seized items beyond reasonable doubt and petitioner must be acquitted of the crimes charged.

In view of petitioner's acquittal, his co-accused, Lariosa, must likewise be acquitted considering that under Section 11(a), Rule 122 of the Revised Rules of Criminal Procedure, a favorable judgment shall benefit the co-accused who did not appeal; and the evidence against and the conviction of both accused are inextricably linked.[36]

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated August 10, 2020 and the Resolution dated May 6, 2021 of the Court of Appeals in CA-G.R. CR-HC No. 01760-MIN are hereby **REVERSED** and **SET ASIDE**. Petitioner Joseph D. De Vera is **ACQUITTED** of the crimes charged in Criminal Case Nos. CrC 395-2011 and 398-2011 on the ground of reasonable doubt. Accused Alejandro G. Lariosa, Jr., is likewise **ACQUITTED** of the crimes charged in Criminal Case

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[32] *Rollo*, p. 27.
[33] 830 Phil. 619 (2018).
[34] Id. at 633.
[35] *People v. Umipang,* 686 Phil. 1024, 1053 (2012).
[36] *Lim v. Court of Appeals*, 524 Phil. 694, 700-701 (2006).

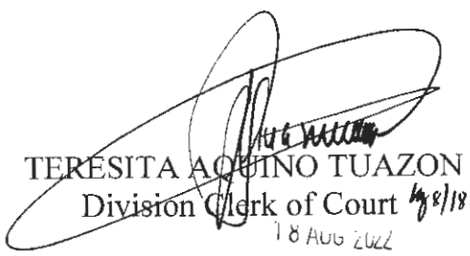
Nos. CrC 395-2011 and 396-2011 on the ground of reasonable doubt. They are **ORDERED IMMEDIATELY RELEASED** from detention unless they are confined for any other lawful cause.

Let entry of final judgment be issued immediately.

Let copies of this Resolution be furnished to the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director General is **DIRECTED** to immediately implement this Resolution and to inform this Court of the action he/she has taken within five days from receipt hereof.

SO ORDERED."

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court
18 AUG 2022

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THE SUPERINTENDENT (reg)
Davao Prison and Penal Farm
B.E. Dujali, Davao del Norte

- more -

THE DIRECTOR (x)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 34
Panabo City, Davao del Norte
(Crim. Case Nos. CrC 395-2011,
CrC 396-2011 & CrC 398-2011)

PUBLIC ATTORNEY'S OFFICE (reg)
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CA-G.R. CR H.C. No. 01760-MIN

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PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

*For this resolution only
Please notify the Court of any change in your address.
UDK17135. 4/20/2022(58)URES(a)