



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 19, 2022 which reads as follows:

“UDK 17175 (Ben Macalimpas y Malot, *Petitioner* vs. People of the Philippines, *Respondent*). – Before the Court is a Motion to Recall Entry of Judgment and Petition for Review on *Certiorari*¹ (petition) assailing the Court of Appeals (CA) decision dated September 25, 2009 (assailed CA Decision) in CA-G.R. CR-HC No. 03425. The CA dismissed the appeal of Ben Macalimpas y Malot (petitioner) for his failure to file an appellant’s brief which rendered his conviction for Illegal Sale and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5² and 11,³ Article II of Republic Act No. 9165⁴ final and executory.

In Criminal Case Nos. Q-05-136329 and Q-05-136330, the Regional Trial Court of Quezon City found petitioner guilty beyond reasonable doubt of the offenses of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively.⁵

- over – four (4) pages ...

98-B

¹ *Rollo*, pp. 3-6.

² SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*
— x x x.

³ SECTION 11. *Possession of Dangerous Drugs.* — x x x.

⁴ 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 [Comprehensive Dangerous Drugs Act of 2002], Republic Act No. 9165 (2002).

⁵ *Rollo*, p. 3.

Petitioner filed an appeal to the CA but failed to file an appellant's brief as his counsel allegedly neglected him.⁶ Thus, the CA dismissed petitioner's appeal in its decision dated September 25, 2009 rendering his conviction final and executory. Consequently, the CA issued an entry of judgment in the case.⁷

Imputing error against the CA for dismissing his appeal, petitioner files the instant petition. However, the Court cannot entertain the instant petition as the assailed CA Decision already became final and executory upon the CA's issuance of an entry of judgment on even date.⁸ Besides, petitioner offered no explanation as to why it took him twelve (12) years to file, on August 24, 2021, the instant petition before the Court and challenge the CA Decision.

At any rate, the petition suffers from the following defects warranting its outright dismissal: (i) lacks statement of material dates in violation of Section 4(b),⁹ Rule 45 of the Rules of Court (Rule 45); (ii) lacks affidavit of service of the petition to the CA and adverse party in violation of Section 3,¹⁰ Rule 45; (iii) lacks a copy of the assailed CA Decision in violation of Section 4(d),¹¹ Rule 45; (iv) no verification and certification against forum shopping in violation of Sections 1¹² and 4(e),¹³ Rule 45, respectively; (v) nonpayment of docket and other legal fees, in violation of Section 3,¹⁴ Rule 45; and

- over -

98-B

⁶ Id. at 4.

⁷ Id. at 3.

⁸ Id.

⁹ Section 4. *Contents of Petition.* — x x x (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; x x x.

¹⁰ Section 3. *Docket and Other Lawful Fees; Proof of Service of Petition.* — x x x Proof of service of a copy, thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.

¹¹ Section 4. *Contents of Petition.* — x x x (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; x x x.

¹² Section 1. *Filing of Petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

¹³ Section 4. *Contents of Petition.* — x x x and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.

¹⁴ Section 3. *Docket and Other Lawful Fees; Proof of Service of Petition.* — Unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the amount of P500.00 for costs at the time of the filing of the petition. Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.

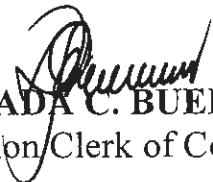
(vi) no statement of matters, reasons, or arguments relied on for the allowance of the petition and lacks such material portions of the record as would support the petition in violation of Section 4(c)¹⁵ and (d),¹⁶ Rule 45, respectively.

On account of the above technical defects, the Court dismisses the instant petition pursuant to Section 5,¹⁷ Rule 45, in relation to Section 5(d),¹⁸ Rule 56 of the Rules of Court.

ACCORDINGLY, the petition is **DISMISSED** for being defective in form and in substance.

SO ORDERED.” Gaerlan, J., on official leave.

By authority of the Court:


LIBRADA C. BUENA,
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

98-B
JUL 19 2022

- over -

¹⁵ Section 4. *Contents of Petition.* — x x x (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition. x x x.

¹⁶ Section 4. *Contents of Petition.* — x x x (d) be accompanied by x x x such material portions of the record as would support the petition. x x x.

¹⁷ Section 5. *Dismissal or Denial of Petition.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

¹⁸ Section 5. *Grounds for Dismissal of Appeal.* — The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

x x x x

(d) Failure to comply with the requirements regarding proof of service and contents of and the documents which should accompany the petition;

x x x x



PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Petitioner
5/F, DOJ Agencies Building
NIA Road cor. East Avenue, Diliman
1101 Quezon City

Mr. Ben M. Macalimpas
Petitioner
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

The Director General
Bureau of Corrections
1770 Muntinlupa City

Court of Appeals (x)
1000 Manila
(CA-G.R. CR-HC No. 03425)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 78
1100 Quezon City
(Crim. Case Nos. Q-05-136329
& Q-05-136330)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Philippine Judicial Academy (x)
Supreme Court

Judgment Division (x)
Supreme Court

98-B

UR

NFF