



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 11, 2023**, which reads as follows:*

**“G.R. No. 258500 (Leonel Viotti Dias Da Silva, Petitioner v. The Honorable Court of Appeals, Respondent).** — This Petition for *Certiorari*<sup>1</sup> rails against the Decision<sup>2</sup> and the Resolution<sup>3</sup> of the Court of Appeals (CA), in CA-G.R. CR No. 42920, affirming the Decision<sup>4</sup> of Branch 62, the Regional Trial Court of La Trinidad, Benguet, and denying the motion for reconsideration thereof, respectively. The trial court upheld the Decision<sup>5</sup> dated October 19, 2017 of the Municipal Circuit Trial Court Tuba-Sablan, Benguet, which convicted Leonel Viotti Dias Da Silva (petitioner) of reckless imprudence resulting in damage to property under Article 365 of the Revised Penal Code.

***The Petition is devoid of merit.***

Prefatorily, the Petition is defective as it failed to indicate the material date showing when the motion for reconsideration of the assailed *Decision* was filed, in violation of Section 4, Rule 65 in relation to Section 3 of Rule 46 of the Rules of Court. Moreover, additional attestations in the verification are wanting, which are required under Section 4, Rule 7 of the 2019 Amended Rules of Court, as amended by A.M. No. 19-10-20-SC.

Nevertheless, even if the foregoing procedural defects are brushed aside, Leonel Viotti Dias Da Silva (petitioner) clearly availed of the wrong remedy when he filed before the Court a *certiorari* petition under Rule 65 of the Rules of Court in order to impugn the Decision of the Court of Appeals. Section 1, Rule 45 of the Rules of Court provides that a judgment or a final

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<sup>1</sup> *Rollo*, pp. 3-28.

<sup>2</sup> *Id.* at 31-43. The Decision dated June 16, 2020 was penned by Associate Justice Jhosep Y. Lopez (now a Member of this Court), with the concurrence of Associate Justices Ricardo R. Rosario (now a Member of this Court) and Bonifacio S. Pascua.

<sup>3</sup> *Id.* at 29-30. The Resolution dated November 12, 2021 was penned by Associate Justice Bonifacio S. Pascua, with the concurrence of Associate Justices Ramon R. Bato, Jr. and Associate Justice Maria Filomena D. Singh (now a Member of this Court).

<sup>4</sup> *Id.* at 31 and 36.

<sup>5</sup> *Id.* at 44-54. Penned by Acting Presiding Judge Modesto D. Bahul, Jr.

order or resolution of the Court of Appeals may be appealed to this Court via a verified petition for review on *certiorari*. Petitioner's access to the right to appeal under Rule 45 is a bar to his recourse via a petition for *certiorari* as the special civil action for *certiorari* may be pursued only when there is no appeal or any plain, speedy, or adequate remedy that may be resorted to. Case law instructs that *certiorari* is not and cannot be a substitute for a lapsed or lost appeal, which loss was due to a party's fault or negligence or where a person, fails, without justifiable ground, to interpose an appeal despite its accessibility. Clearly, where a specific remedy is provided by the rules for the vindication of rights, such remedy should be availed of.<sup>6</sup>

Verily, a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>7</sup> A sedulous examination of the petition reveals that petitioner neither imputed grave abuse of discretion on the part of the CA nor asserted any errors of jurisdiction. Instead, he put forth errors of law pertaining to the merits and soundness of the assailed Decision. Suffice it to say that the same is beyond the ambit of a petition for *certiorari*; petitioner should have availed of the appropriate remedy, *i.e.*, an appeal before this Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court.

**WHEREFORE**, the Petition for *Certiorari* is hereby **DENIED**. The Decision dated June 16, 2020 and the Resolution dated November 12, 2021 of the Court of Appeals in CA-G.R. CR No. 42920 are **AFFIRMED**.

**SO ORDERED.**" (Singh, *J.*, no part; Leonen, *J.*, designated additional member per Raffle dated September 20, 2022)

By authority of the Court:

Misael Domingo C. Battung III  
Misael Domingo C. Battung III  
Division Clerk of Court  
Misael Domingo C. Battung III

<sup>6</sup> See *Basa-Egami v. Bersales*, G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division] at 5. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

<sup>7</sup> See *Pendoy v. Court of Appeals (18th Division)-Cebu City, et al.*, G.R. No. 228223, June 10, 2019 [Per J. Peralta, Third Division].

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The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 62,  
La Trinidad, 12601 Benguet  
(Criminal Case No. 18-CR-12260)

The Presiding Judge  
MUNICIPAL CIRCUIT TRIAL COURT  
Tuba-Sablan, Benguet  
(Crim. Case No. 3817)

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**G.R. No. 258500**

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