



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated February 13, 2023, which reads as follows:

G.R. No. 263324 – WARREN V. TINDOG, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

The Court resolves to:

(1) **NOTE:**

- (a) the Entry of Appearance dated August 30, 2022, filed by Atty. Keisha L. Rojas of the Public Attorney's Office, Regional Special and Appealed Cases Unit, Cebu City as counsel for the petitioner, requesting that she be furnished with copies of all pleadings, notices and other court processes in this case at 3rd Floor Taft Commercial Center, Metro Colon Carpark Osmeña Boulevard, Cebu City, with Motion for Leave of Court to File and Admit attached Petition for Review on *Certiorari* praying that the attached petition be admitted and given due course for reasons stated therein; and
- (b) petitioner's Manifestation (re: Payment of Sheriff's Trust Fund) dated August 31, 2022, stating that a formal entry of appearance with motion for leave of court to file and admit the attached petition was filed on August 31, 2022 and in compliance with A.M. No. 17-12-09-SC, he is submitting the Postal Money Order with Check No. 0000083544 in the amount of One Thousand Pesos (PHP 1,000.00) as payment for the Sheriff's Trust Fund; and

- (2) **REQUIRE** petitioner to **SUBMIT** to the Court (a) a verified declaration of electronic submission of the filed soft copy of said petition as required under the Rules on E-Filing (A.M. No. 10-3-7-SC) and the Efficient Use of Paper Rule (A.M. No. 11-9-4-SC) and (b) a valid verification of the petition with additional

attestations as required under Section 4, Rule 7 of the 2019 Amended Rules of Court within ten (10) days from notice.

On August 30, 2022, the Public Attorney's Office-Regional Special and Appealed Cases Unit (PAO-RSACU) Cebu (PAO) filed a Formal Entry of Appearance with Motion for Leave of Court to File and Admit Attached Petition for Review on *Certiorari* (**Motion for Leave**),¹ dated August 30, 2022, in behalf of Warren V. Tindog (**Tindog**). Tindog was charged with violation of Section 11, Article II of Republic Act No. 9165² under an Information, dated April 28, 2016, filed before the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 30 (RTC). The RTC convicted Tindog and imposed the penalty of life imprisonment in its Decision,³ dated June 11, 2018. The Court of Appeals (CA) dismissed Tindog's appeal in its Resolution (**CA Resolution**),⁴ dated November 8, 2019, because of Tindog's failure to seasonably file his Appellant's Brief.

In the Motion for Leave, the PAO alleged that it received a letter dated March 28, 2022 from Tindog requesting legal assistance to represent him in the appeal of his case before the Court. In this letter, Tindog explained that he could no longer afford the services of his former private counsel and that his former counsel failed to timely file his Appellant's Brief which caused the dismissal of his appeal in the CA. The PAO similarly received a "1st Indorsement Letter," dated April 27, 2022, from the PAO Central Office endorsing Tindog's request to be assisted by the PAO. Thus, the PAO entered its appearance for Tindog.⁵

The Motion for Leave also prayed that the Court allow the filing of Tindog's Petition for Review on *Certiorari* (**Petition**).⁶ The Motion for Leave asserted that while, as a general rule, the negligence of counsel binds the client, this does not apply "when the reckless or gross negligence of the counsel deprives the client of due process of law, or of his liberty or property, and where the interest of justice so requires."⁷

The PAO explained that at the time that the CA promulgated its February 7, 2022 Resolution,⁸ Tindog was already confined at the New Bilibid Prison, Muntinlupa and thus could not oversee the proceedings in his case. In fact, Tindog was not even informed by his former counsel that the Appellant's Brief was not filed on time. Nonetheless, upon learning of the unfavorable

¹ *Rollo*, pp. 3-8.

² COMPREHENSIVE DRUGS ACT OF 2002, approved on June 7, 2002.

³ *Id.* at 74-79. Rendered by Judge Rafael Crescencio C. Tan, Jr.

⁴ *Id.* at 55-56. Penned by Associate Justice Emily R. Aliño-Geluz, with the concurrence of Associate Justices Gabriel T. Ingles and Dorothy P. Montejo-Gonzaga.

⁵ *Id.* at 3.

⁶ *Id.* at 6.

⁷ *Id.* at 4.

⁸ *Id.* at 80-82. Penned by Associate Justice Gabriel T. Ingles, with the concurrence of Associate Justices Lorenza Redulla Bordios and Bautista G. Corpin, Jr.

February 7, 2022 Resolution, Tindog immediately wrote the PAO to request for legal assistance. Thus, the Motion for Leave asserted that it would be unjust and unfair for Tindog to be deprived of his right to appeal and forfeit his constitutional right to liberty because of the negligence of his counsel.⁹

The Court resolved to grant the Motion for Leave, admit Tindog's Petition, and order the respondent to file its comment. In ruling that Tindog's Petition should be admitted despite the fact that it was filed beyond the reglementary period, the Court anchored its decision on the fact that Tindog's former counsel was grossly negligent and that such gross negligence should not bind Tindog.

The records of the case show that the CA dismissed Tindog's appeal of the RTC Decision because Tindog's original counsel, Atty. Cyrus C. Riconalla (**Atty. Riconalla**), belatedly filed the Appellant's Brief and the Motion for Reconsideration of the CA Resolution. He was also not forthcoming because he did not inform Tindog that the Appellant's Brief was filed out of time. Atty. Riconalla's gross negligence led to the deprivation of Tindog's right to his day in court.

It should be noted that Atty. Riconalla asked for, and was granted, additional time to file the Appellant's Brief in the CA. This notwithstanding, he failed to seasonably file the Appellant's Brief within the additional period given. In fact, he belatedly filed a Motion for Second Extension of Time to file Appellant's Brief. Despite the fact that this motion was filed out of time, the CA still opted to grant it in the interest of justice and gave Tindog up to February 21, 2019 to file the Appellant's Brief.¹⁰

Instead of filing the Appellant's Brief within this period, Atty. Riconalla submitted it as an annex to the Motion for Reconsideration which he filed on February 28, 2020, or one year after the period granted to him by the CA to file the same.

Atty. Riconalla's repeated failure to file the Appellant's Brief on time, notwithstanding the multiple opportunities granted, is simply inexcusable. It cannot be overemphasized that the CA even granted Atty. Riconalla's second motion for additional extension in the interest of justice, despite the fact that this motion was already belatedly filed. Instead of filing within the additional period given, Atty. Riconalla squandered the many chances given him. Even worse, Atty. Riconalla did not even attempt to proffer an explanation for his repeated failure to file the Appellant's Brief.

⁹ Id. at 5.

¹⁰ Id. at 25.

Further, Atty. Riconalla also filed the Motion for Reconsideration out of time. In the Motion for Reconsideration, Atty. Riconalla admits that this was due to his own negligence. Specifically, he alleged that (a) he received the CA Resolution on December 19, 2019; and (b) that he did not see the CA Resolution sooner purportedly because his secretary did not immediately turn it over to him.¹¹

With respect to the belated filing of the Motion for Reconsideration allegedly because of the error of Atty. Riconalla's secretary, the Court has consistently held that this does not excuse a lawyer's gross negligence. In *Spouses Sarraga v. Banco Filipino Savings & Mortgage Bank*,¹² the Court explained:

Time and again this Court has admonished law offices to adopt a system of distributing and receiving pleadings and notices, so that the lawyers will be promptly informed of the status of their cases. Thus, the negligence of clerks which adversely affect the cases handled by lawyers is binding upon the latter.¹³

Worse, Atty. Riconalla did not bother to inform Tindog of the fact that the Appellant's Brief was filed out of time. Atty. Riconalla's decision to withhold this information from Tindog aggravated his conduct and ultimately prevented Tindog from taking the necessary steps to protect his interests. That Tindog was already incarcerated at this time and was thus unable to closely monitor the progress of his appeal worsened Atty. Riconalla's transgressions. All these led to the deprivation of Tindog's day in court, and specifically, his right to file an Appellant's Brief and to plead his case properly before the CA. That Tindog was penalized with life imprisonment makes Atty. Riconalla's negligence even more egregious. Lawyers cannot be allowed to trifle with the life and liberty of their clients.

Section 1 of Rule 139-B of the Rules of Court provides that the Integrated Bar of the Philippines (IBP) Board of Governors may, upon referral by the Court, initiate and prosecute proper charges against erring lawyers. In accordance with this, the Court refers this case to the IBP for appropriate action as regards Atty. Riconalla's acts and omissions in his representation of Tindog.

WHEREFORE, the Court directs the Integrated Bar of the Philippines to investigate Atty. Cyrus C. Riconalla in connection with his representation of Warren V. Tindog and to take all necessary and appropriate steps in the conduct of such investigation.

¹¹ Id. at 57.

¹² 442 Phil. 55 (2002).

¹³ Id. at 63.

The Court also **GRANTS** the Motion for Leave of Court to File and Admit Attached Petition for Review on *Certiorari* dated August 30, 2022, and **ADMITS** the Petition for Review on *Certiorari* under Rule 45, dated August 30, 2022. The Office of the Solicitor General is directed to file a **COMMENT** within 15 days from receipt of this resolution.

SO ORDERED.

By authority of the Court:

Misael Domingo C. Battung III
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
7/7/23

Regional Special & Appealed Cases Unit
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OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
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The Presiding Judge
REGIONAL TRIAL COURT OF NEGROS ORIENTAL
7TH Judicial Region
Branch 30, Dumaguete City
6200 Negros Oriental
(Criminal Case No. 2016-23683)

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