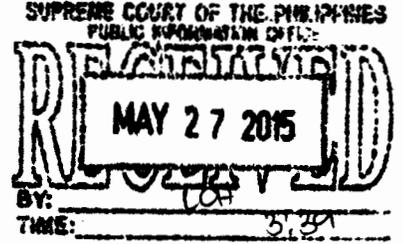




Republic of the Philippines
Supreme Court
 Baguio City
FIRST DIVISION
NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 20, 2015 which reads as follows:

“G.R. No. 216593 (Roberto O. Lozada, Jr. v. People of the Philippines). - The petitioner’s motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

After a judicious review of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the September 25, 2014 Decision¹ and January 22, 2015 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 131731 for failure of Roberto O. Lozada, Jr. (petitioner) to sufficiently show that the CA committed any reversible error in upholding his conviction for the crime of Direct Assault defined and penalized under Article 148 of the Revised Penal Code (RPC), as amended, and sentencing him to suffer an indeterminate penalty of five (5) months and eleven (11) days of *arresto mayor* in its maximum, as minimum, to one (1) year, eight (8) months, and twenty (20) days of *prision correccional* in its minimum, as maximum, and to pay a fine of ₱500.00.

At the outset, the CA did not err when it ruled that petitioner availed of the wrong mode of appeal when he sought a review of his conviction *via* a petition for *certiorari* under Rule 65 of the Rules of Court instead of filing a petition for review on *certiorari* under Rule 42 of the same Rules, the proper recourse to challenge the Decision of the Regional Trial Court

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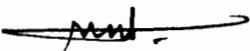
¹ *Rollo*, pp. 27-35. Penned by Associate Justice Florito S. Macalino with Associate Justices Seseinando E. Villon and Pedro B. Corales, concurring.

² *Id.* at 37-38.

(RTC) in the exercise of its appellate jurisdiction. In any case, the CA cannot be said to have dismissed his petition on a mere technicality considering its findings that there was a confluence of all the elements of the *second mode* of committing the crime of Direct Assault, to wit: (1) the offender (*a*) makes an attack, (*b*) employs force, (*c*) makes a serious intimidation, or (*d*) makes a serious resistance; (2) the person assaulted is a person in authority or his agent; (3) at the time of the assault, the person in authority or his agent (*a*) is engaged in actual performance of official duties, or (*b*) he is assaulted by reason of the past performance of official duties; (4) the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties; and (5) there is no public uprising.³ As records are bereft of showing that the CA overlooked, misunderstood or misapplied certain material facts in affirming the RTC's Decision convicting petitioner of Direct Assault, the Court is therefore not inclined to depart from and overturn the CA's findings and conclusions in this case.

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court ^{with}
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The Solicitor General (x)
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Judgment Division (x)
Supreme Court

The Hon. Presiding Judge
Regional Trial Court, Br. 70
Iba 2201 Zambales
(Crim. Case No. RTC-5934-I)

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No. 12-7-1-SC)

SR

³ *Gelig v. People*, G.R. No. 173150, July 28, 2010, 626 SCRA 48, 54; citation omitted.