



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 11 November 2020 which reads as follows:

“G.R. No. 252837 (Martin Dela Merced III a.k.a. “Arnold Cruz” v. Hon. Myra V. Garcia-Fernandez of the Former Seventh Division of the Court of Appeals and People of the Philippines). – After a review of the records, this Court resolves to **DISMISS** the petition for failure of Martin Dela Merced III a.k.a. “Arnold Cruz” (*petitioner*) to (1) avail of the proper remedy; (2) file the petition on time; and, (3) sufficiently show that the Court of Appeals (*CA*) gravely erred or abused its discretion when it issued its July 24, 2019 Decision.¹

The proper remedy of a party aggrieved by a decision of the CA is an appeal by *certiorari* under Rule 45; and such is not similar to a special civil action for *certiorari* under Rule 65 of the Rules of Court (*Rules*). As provided in Rule 45 of the Rules, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which in essence is a continuation of the appellate process over the original case.

Since petitioner assails the final decision of the CA, he should have filed a petition for review on *certiorari* under Rule 45 of the Rules instead of a petition for *certiorari* under Rule 65 of the Rules. A special civil action under Rule 65 is a limited form of review and is a remedy of last recourse. It is an independent action that lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.²

Moreover, the petition was filed out of time. Petitioner’s counsel received the CA Resolution denying his motion for reconsideration on February 20, 2020. Petitioner had sixty (60) days to file a petition for

¹ *Rollo*, pp. 22-26; penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Ramon M. Bato, Jr. and Perpetua T. Atal-Paño, concurring.

² *Albor v. Court of Appeals*, 823 Phil. 901, 909-910 (2018); citations omitted.

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certiorari under Rule 65 of the Rules, or until April 20, 2020. Given the enhanced community quarantine implemented on March 16, 2020, this Court issued several administrative circulars to advise litigants on the suspension and extension of the periods to file petitions, appeals, and other pleadings which fall within the community quarantine period. Thus, the period for petitioner to file his petition was suspended and extended several times. However, Administrative Circular No. 41-2020 issued by this Court resumed the periods for court actions on June 1, 2020 and no longer allowed extensions in the filing of petitions, appeals, and other pleadings. Thus, petitioner had thirty (30) days from June 1, 2020,³ or until July 1, 2020, to file his petition. Petitioner, however, filed the petition for *certiorari* only on July 30, 2020.

The docket and other legal fees were also paid out of time, in violation of Section 3, Rule 46 of the Rules, in relation to Sec. 2, Rule 56 of the same. Under Rule 46, the failure of petitioner to comply with such requirement shall be sufficient ground for the dismissal of the petition.

Petitioner was charged with violation of Sec. 3(c) of Republic Act (R.A.) No. 3019 and estafa through falsification of public document in separate Informations which similarly allege that they were committed by petitioner "while in the performance and taking advantage of his official functions." Petitioner, as Labor Employment Officer III, has a salary grade below 27; thus, the criminal complaints against him were properly filed with the RTC. After trial, the RTC found him guilty of these crimes.

Petitioner, however, harps on the RTC's finding that he did not take advantage of his official position in committing the crimes to justify his appellate recourse with the CA.

Appellate jurisdiction, however, is not dependent on the findings of the trial court. Appellate jurisdiction is conferred by law. To argue otherwise would be to countenance a swinging of appellate forum from one tribunal to another depending on factual determinations.

Petitioner cannot take solace in the case of *Pascual v. People*.⁴ In said case, the appellate jurisdiction of the CA was not in issue before this Court. Moreover, therein petitioner brought on appeal to the CA her conviction for estafa through falsification of public document. In contrast, petitioner

³ Pursuant to Administrative Circular No. 40-2020, the filing of petitions, appeals, complaints, motions, pleadings and other court submissions that fall due up to 31 May 2020 before the courts in the areas under GCQ is extended for 30 calendar days, counted from 1 June 2020, but the pleadings and other court submissions may still be filed by the parties within the reglementary period on or before 31 May 2020 through electronic means, if preferred and able. In the same manner, the periods for court actions with prescribed periods of courts in areas under GCQ are likewise extended for 30 calendar days counted from 1 June 2020.

⁴ 791 Phil. 506 (2016).

appealed to the CA his conviction of two crimes – estafa through falsification of public document and violation of Sec. 3(c) of R.A. No. 3019 or *the Anti-Graft and Corrupt Practices Act*.

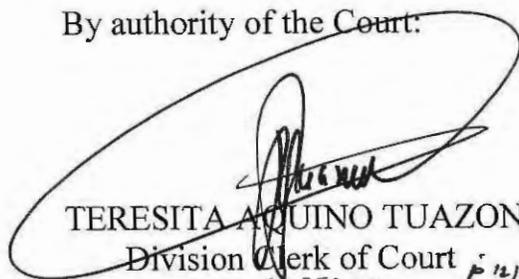
As to the filing of the appeal before the wrong forum, this Court in *Dizon v. People (Dizon)*,⁵ underscored that the duty to transmit the records of the case to the proper court devolves upon the RTC.⁶ Hence, where the appeal is erroneously brought to the CA, without appellant's fault and with appellant trying to correct the error within the period to appeal, this Court has directed the remand of the records to the RTC for proper transmission to the Sandiganbayan.

This Court, however, cannot extend such liberality to petitioner. In *Dizon*, the appellant tried to rectify the error and filed a motion to endorse case to the Sandiganbayan, which the CA denied. In fact, it was this denial by the CA which the appellant brought to this Court on appeal and which this Court set aside. In this case, however, petitioner seeks no correction of the mistake, insisting that it is the CA which has jurisdiction over his appeal.

WHEREFORE, the petition is **DISMISSED**. The July 24, 2019 Decision of the Court of Appeals in CA-G.R. CR No. 37289 is **AFFIRMED**.

SO ORDERED. (Rosario, *J.*, designated additional member per Special Order No. 2797 dated November 5, 2020)"

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
18 DEC 2020 P 12/18

⁵ 824 Phil. 599 (2018).

⁶ *Id.* at 608.

Resolution

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G.R. No. 252837
November 11, 2020

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(Crim. Case Nos. 11-283796 & 11-283797)

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Please notify the Court of any change in your address.
GR252837. 11/11/2020(158)URES *hdt*