



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HENRY ONG LAY HIN,
Petitioner,

G.R. No. 191972

Present:

-versus-

CARPIO, J., *Chairperson*,
VELASCO, JR. *
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

COURT OF APPEALS (2nd
Division), HON. GABRIEL T.
INGLES, as Presiding Judge of
RTC Branch 58, Cebu City, and the
PEOPLE OF THE PHILIPPINES,
Respondents.

Promulgated:

JAN 26 2015

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DECISION

LEONEN, J.:

Hiring legal counsel does not relieve litigants of their duty to “monitor the status of [their] case[s],”¹ especially if their cases are taking an “unreasonably long time”² to be resolved.

This is a Petition³ for certiorari, prohibition, and mandamus with application for preliminary and/or mandatory injunction to set aside the

* Designated acting member per S.O. No. 1910 dated January 12, 2015.

¹ *Bejarasco, Jr. v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 331 [Per J. Bersamin, Third Division].

² *Id.*

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Court of Appeals' Entry of Judgment⁴ in CA-G.R. CR No. 24368, and the Regional Trial Court, Branch 58, Cebu City's Order⁵ dated March 25, 2004 and Order of Detention⁶ dated February 15, 2010 in Criminal Case No. CBU-48773.⁷

In the Decision⁸ dated February 8, 2000, the Regional Trial Court, Branch 58, Cebu City, convicted petitioner Henry Ong Lay Hin (Ong) and Leo Obsioma, Jr. (Obsioma, Jr.) of estafa punished under Article 315, paragraph 1(b) of the Revised Penal Code.⁹ The trial court found that Ong and Obsioma, Jr. failed to pay Metropolitan Bank and Trust Company a total of ₱344,752.20, in violation of their trust receipt agreement with the bank.¹⁰ They were sentenced to suffer the indeterminate penalty of four (4) years, two (2) months, and one (1) day of *prision correccional* as minimum to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal* as maximum.¹¹

Ong filed a Motion for Reconsideration,¹² which the trial court denied in its Order¹³ dated March 31, 2000.

Ong filed a Notice of Appeal,¹⁴ which the trial court gave due course.¹⁵ The trial court then transmitted the case records to the Court of Appeals.¹⁶

In the Decision¹⁷ dated November 29, 2001, the Court of Appeals affirmed *in toto* the trial court's Decision.¹⁸ The Court of Appeals likewise denied Ong's Motion for Reconsideration and Supplemental Motion for Reconsideration in its Resolution¹⁹ dated April 14, 2003 for raising mere rehashed arguments.²⁰

³ *Rollo*, pp. 3–26.

⁴ *Id.* at 61.

⁵ *Id.* at 46.

⁶ *Id.* at 47.

⁷ *Id.* at 46–47.

⁸ RTC records, pp. 183–193. The Decision was penned by Presiding Judge Jose P. Soberano, Jr.

⁹ *Id.* at 193.

¹⁰ *Id.* at 188–189.

¹¹ *Id.* at 193.

¹² *Id.* at 199–206.

¹³ *Id.* at 237. The Order was penned by Pairing Judge Victorino U. Montecillo.

¹⁴ *Id.* at 241.

¹⁵ *Id.* at 242.

¹⁶ *Id.* at 245–246.

¹⁷ *Rollo*, pp. 29–39. The Decision was penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Cancio C. Garcia (Chair) (former Justice of this court) and Bienvenido L. Reyes (currently a Justice of this court) of the Second Division.

¹⁸ *Id.* at 38.

¹⁹ *Id.* at 41.

²⁰ *Id.*

The Court of Appeals then issued an Entry of Judgment,²¹ declaring that the case became final and executory on May 15, 2003. The Court of Appeals based the date of finality on the date of receipt indicated in the registry return card²² corresponding to the mail sent to Ong's former counsel, Zosa & Quijano Law Offices. Based on the registry return card, Zosa & Quijano Law Offices received on April 29, 2003 a copy of the Court of Appeals' Resolution denying Ong's Motion for Reconsideration.²³

On March 22, 2004, the trial court received the original records of the case, the Decision, and the Entry of Judgment issued by the Court of Appeals. In view thereof, the trial court, then presided by Judge Gabriel T. Ingles, ordered the arrest of Ong.²⁴

Almost six (6) years after, or on February 12, 2010 at about 10:30 p.m., Ong was arrested at Ralphs Wines Museum located at No. 2253 Aurora Boulevard, Tramo, Pasay City.²⁵ He was initially ordered committed to the Cebu City Jail²⁶ but is currently serving his sentence at the New Bilibid Prison.²⁷

On May 6, 2010, Ong filed before this court a Petition for Certiorari, Prohibition, and Mandamus with application for issuance of preliminary and/or mandatory injunction.²⁸

In the Resolution²⁹ dated June 16, 2010, this court ordered respondents to comment on Ong's Petition.³⁰

In the meantime, Ong filed the Urgent Motion for Preliminary Mandatory Injunction or, Alternatively, for Bail,³¹ which this court noted in the Resolution³² dated July 28, 2010.

The People of the Philippines then filed a Comment³³ on the Petition for Certiorari, Prohibition, and Mandamus. It also commented on Ong's Motion for Preliminary Injunction or, Alternatively, for Bail.³⁴

²¹ CA *rollo*, p. 208.

²² Id. at 206.

²³ See CA *rollo*, p. 206.

²⁴ RTC records, p. 268.

²⁵ Id. at 274.

²⁶ Id. at 282.

²⁷ *Rollo*, pp. 265 and 272–273.

²⁸ Id. at 3.

²⁹ Id. at 68–69.

³⁰ Id. at 68.

³¹ Id. at 77–86.

³² Id. at 88–89.

³³ Id. at 111–129.

³⁴ Id. at 132–146.

Ong replied to the Comment on the Petition³⁵ and to the Comment on the Motion for Preliminary Injunction or, Alternatively, for Bail.³⁶ He then filed a supplemental pleading to his Reply.³⁷

In his Petition for Certiorari, Ong alleges that his counsel never received a copy of the Court of Appeals' Resolution denying his Motion for Reconsideration. Consequently, the Decision of the Court of Appeals never became final and executory, and the Court of Appeals gravely abused its discretion in issuing the Entry of Judgment. Judge Gabriel T. Ingles likewise gravely abused his discretion in issuing a warrant for his arrest and ordering his commitment to the Cebu City Jail.³⁸

Assuming that his former counsel received a copy of the Court of Appeals' Resolution, Ong argues that his counsel was grossly negligent in failing to appeal the Court of Appeals' Resolution. This gross negligence allegedly deprived him of due process and, therefore, should not bind him.³⁹

Considering the alleged grave abuse of discretion of the Court of Appeals and the trial court, Ong prays that this court issue a Writ of Preliminary Mandatory Injunction for him to be "liberated from his . . . illegal imprisonment."⁴⁰ In the alternative, he prays that this court allow him to post bail for his provisional liberty while this court decides his Petition for Certiorari.⁴¹

In its Comment, the People of the Philippines argues that the registry return card "carries the presumption that 'it was prepared in the course of official duties that have been regularly performed [and must be] presumed to be accurate unless proven otherwise.'"⁴² In this case, the registry return card corresponding to the copy of the Court of Appeals' Resolution sent to Ong's former counsel indicates that his counsel received the Resolution on April 29, 2003. This date, therefore, must be presumed to be the date of receipt of the Resolution. Since Ong failed to appeal within the reglementary period, the Court of Appeals' Decision became final and executory and the Court of Appeals correctly issued the Entry of Judgment.⁴³

³⁵ Id. at 155–166.

³⁶ Id. at 171–178.

³⁷ Id. at 190–206.

³⁸ Id. at 17–19.

³⁹ Id. at 20–21.

⁴⁰ Id. at 21.

⁴¹ Id. at 85.

⁴² Id. at 119.

⁴³ Id. at 118–120.

Even assuming that his former counsel did not receive a copy of the Resolution, the People argues that this negligence bound Ong under the rule that the negligence of counsel binds the client.⁴⁴

With respect to Ong's prayer for issuance of a Writ of Preliminary Mandatory Injunction, the People contends that he "failed to point out [the] specific instances where the [Court of Appeals and the trial court] had committed grave abuse of discretion[.]"⁴⁵ Consequently, Ong is not entitled to the Writ prayed for.⁴⁶

On Ong's prayer to be allowed to post bail, the People argues that the grant of bail is premised on the uncertainty of whether an accused is guilty or innocent.⁴⁷ Considering that Ong's conviction had already removed this uncertainty, "it would, generally speaking, be absurd to admit [Ong] to bail."⁴⁸

The issues for this court's resolution are:

- (1) Whether the Court of Appeals gravely abused its discretion in issuing the entry of judgment;
- (2) Whether the trial court gravely abused its discretion in issuing the warrant of arrest and commitment order against petitioner Henry Ong Lay Hin; and
- (3) Whether petitioner Henry Ong Lay Hin's former counsel was grossly negligent.

This petition should be denied.

I

There is no grave abuse of discretion in this case

Grave abuse of discretion is the "arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a

⁴⁴ Id. at 122–125.

⁴⁵ Id. at 126.

⁴⁶ Id. at 127.

⁴⁷ Id. at 143, citing *Obosa v. Court of Appeals*, 334 Phil. 253, 273–274 (1997) [Per J. Panganiban, Third Division].

⁴⁸ Id.

refusal to perform a positive duty enjoined by law or to act at all in contemplation of law.”⁴⁹

In the present case, petitioner failed to prove the Court of Appeals’ and trial court’s grave abuse of discretion.

The registry return card is the “official . . . record evidencing service by mail.”⁵⁰ It “carries the presumption that it was prepared in the course of official duties that have been regularly performed [and, therefore,] it is presumed to be accurate, unless proven otherwise[.]”⁵¹

Petitioner failed to rebut this presumption.

The affidavits of petitioner’s wife and mother-in-law, Mary Ann Ong and Nila Mapilit, stating that petitioner’s former counsel told them that the law office never received a copy of the Resolution,⁵² are inadmissible in evidence for being hearsay.⁵³ Moreover, contrary to petitioner’s false claim, his former counsel had notice that the Court of Appeals denied the Motion for Reconsideration as early as April 21, 2004 when his counsel received a copy of the trial court’s Order directing the issuance of a warrant of arrest against petitioner.⁵⁴

With petitioner failing to rebut this presumption, it must be presumed that his former counsel received a copy of the Resolution on April 29, 2003 as indicated in the registry return card. The 15-day period to appeal commenced from this date.⁵⁵ Since petitioner did not file an Appeal within 15 days from April 29, 2003, the Decision became final and executory on May 15, 2003.

Consequently, the Court of Appeals did not gravely abuse its discretion in issuing the Entry of Judgment, which declared petitioner’s

⁴⁹ *Lagua v. The Hon. Court of Appeals*, G.R. No. 173390, June 27, 2012, 675 SCRA 176, 181 [Per J. Sereno (Now C.J.), Second Division].

⁵⁰ *Eureka Personnel & Management Services, Inc. v. Valencia*, 610 Phil. 444, 453 (2009) [Per J. Brion, Second Division].

⁵¹ *Id.* at 453–454.

⁵² *Rollo*, p. 63.

⁵³ RULES OF COURT, Rule 130, sec. 36 provides:

Section 36. *Testimony generally confined to personal knowledge; hearsay excluded.* — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

⁵⁴ RTC records, p. 269. The registry return card addressed to Atty. Francis M. Zosa was attached at the back of p. 269 of the RTC records.

⁵⁵ RULES OF COURT, Rule 122, sec. 6 provides:

Section 6. *When appeal to be taken.* — An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion shall have been served upon the accused or his counsel at which time the balance of the period begins to run.

conviction final and executory as of May 15, 2003. Under Rule 51, Section 10 of the Rules of Court on “Judgment,” “if no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry.”

As for the trial court, it likewise did not gravely abuse its discretion in issuing the arrest warrant against petitioner and ordering his commitment to the Cebu City Jail. Since the Court of Appeals had already issued the Entry of Judgment and had remanded to the trial court the original records of the case, it became the trial court’s duty to execute the judgment.

II

The negligence of petitioner’s former counsel bound him

The general rule is that the negligence of counsel binds the client, even mistakes in the application of procedural rules.⁵⁶ The exception to the rule is “when the reckless or gross negligence of the counsel deprives the client of due process of law.”⁵⁷

The agency created between a counsel and a client is a highly fiduciary relationship. A counsel becomes the eyes and ears in the prosecution or defense of his or her client’s case. This is inevitable because a competent counsel is expected to understand the law that frames the strategies he or she employs in a chosen legal remedy. Counsel carefully lays down the procedure that will effectively and efficiently achieve his or her client’s interests. Counsel should also have a grasp of the facts, and among the plethora of details, he or she chooses which are relevant for the legal cause of action or defense being pursued.

It is these indispensable skills, among others, that a client engages. Of course, there are counsels who have both wisdom and experience that give their clients great advantage. There are still, however, counsels who wander in their mediocrity whether consciously or unconsciously.

The state does not guarantee to the client that they will receive the kind of service that they expect. Through this court, we set the standard on competence and integrity through the application requirements and our

⁵⁶ *Bejarasco, Jr. v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 330 [Per J. Bersamin, Third Division].

⁵⁷ *Id.* at 331.

disciplinary powers. Whether counsel discharges his or her role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.

Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the state is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices.

This is one of the bases of the doctrine that the error of counsel visits the client. This court will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel.

But, there is an exception to this doctrine of binding agency between counsel and client. This is when the negligence of counsel is so gross, almost bordering on recklessness and utter incompetence, that we can safely conclude that the due process rights of the client were violated. Even so, there must be a clear and convincing showing that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests. The error of counsel must have been both palpable yet maliciously exercised that it should viably be the basis for disciplinary action.

Thus, in *Bejarasco, Jr. v. People*,⁵⁸ this court reiterated:

For the exception to apply . . . the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.⁵⁹

In *Bejarasco, Jr.*, Peter Bejarasco, Jr., failed to file a Petition for Review before the Court of Appeals within the extended period prayed for. The Court of Appeals then dismissed the Appeal and issued an Entry of Judgment. His conviction for grave threats and grave oral defamation became final, and a warrant for his arrest was issued.⁶⁰

In his Petition for Review on Certiorari before this court, Peter Bejarasco, Jr. argued that his counsel's negligence in failing to file the Appeal deprived him of due process.⁶¹

⁵⁸ G.R. No. 159781, February 2, 2011, 641 SCRA 328 [Per J. Bersamin, Third Division].

⁵⁹ Id. at 331.

⁶⁰ Id. at 329–330.

⁶¹ Id. at 330.

This court rejected Peter Bejarasco, Jr.'s argument, ruling that "[i]t is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case[.]"⁶² "[T]o merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough."⁶³


This court noted the 16 months from the issuance of the Entry of Judgment and the 22 months from the issuance of the trial court's Decision before Peter Bejarasco, Jr. appealed his conviction.⁶⁴ According to this court, "[h]e ought to have been sooner alerted about his dire situation by the fact that an unreasonably long time had lapsed since the [trial court] handed down the dismissal of his appeal without [his counsel] having updated him on the developments[.]"⁶⁵

In the present case, petitioner took almost seven (7) years, or almost 84 months, from the Court of Appeals' issuance of the Resolution denying his Motion for Reconsideration to file a Petition before this court. As this court ruled in *Bejarasco, Jr.*, petitioner ought to have been sooner alerted of the "unreasonably long time"⁶⁶ the Court of Appeals was taking in resolving his appeal. Worse, he was arrested in Pasay City, not in Cebu where he resides. His failure to know or to find out the real status of his appeal "rendered [petitioner] undeserving of any sympathy from the Court *vis-a-vis* the negligence of his former counsel."⁶⁷

We fail to see how petitioner could not have known of the issuance of the Resolution. We cannot accept a standard of negligence on the part of a client to fail to follow through or address counsel to get updates on his case. Either this or the alternative that counsel's alleged actions are merely subterfuge to avail a penalty well deserved.

WHEREFORE, the Petition for Certiorari is **DISMISSED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

⁶² Id. at 331.

⁶³ Id.


⁶⁴ Id.

⁶⁵ Id.

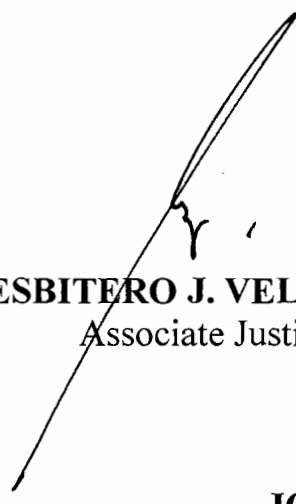
⁶⁶ Id.

⁶⁷ Id. at 332.

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice