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**SUPREME COURT
THIRD DIVISION**

**SANTIAGO TAMAYO alias BATOG,
*Petitioner,***

-versus-

**G.R. No. 147070
February 17, 2004**

**COURT OF APPEALS and PEOPLE OF
THE PHILIPPINES,
*Respondents.***

X-----X

DECISION

CORONA, J.:

In this Petition for Review, petitioner Santiago Tamayo alias Batog prays that the Resolutions^[1] dated November 10, 2000 and January 31, 2001 of the Court of Appeals be reversed and set aside, and that the appellate court be directed to reinstate and give due course to his appeal.

On December 15, 1998, petitioner was convicted by the Regional Trial Court, Branch 57, San Carlos City of arson punishable under Art. 321, no. 1 (b) of the Revised Penal Code. He was sentenced to suffer imprisonment of six years and one day of prision mayor as minimum to 12 years and one day of reclusion temporal as maximum. Petitioner appealed his conviction to the Court of Appeals by filing a notice of

appeal. On June 30, 1999, the appellate court required him to file an appellant's brief. Petitioner, however, failed to file the required brief despite the lapse of one year. This prompted the Court of Appeals to issue the assailed resolution dated November 10, 2000 dismissing his appeal. The Court of Appeals treated petitioner's failure to file the appellant's brief as an abandonment of his appeal, pursuant to Section 8, Rule 124 of the Revised Rules on Criminal Procedure.

Petitioner moved for reconsideration, praying that he be given ample time to prepare his appellant's brief. He averred that he was completely unaware of the non-filing of the brief by his former counsel who withdrew from the case without his knowledge and consent. On January 31, 2002, the Court of Appeals issued another resolution denying reconsideration on the ground that:

x x x as of 29 January 2001 or forty-one (41) days after the filing of this Motion, accused Santiago Tamayo still failed to submit his Appellant's Brief. Accordingly, the Court viewed this non-compliance as an abandonment of his appeal.

WHEREFORE, for failure to file the mandatory Appellant's Brief within the reglementary period, the present appeal is hereby DISMISSED.^[2]

Hence, this petition.

Petitioner maintains that he should not be made to bear the adverse consequences of his former counsel's negligence. He claims that his former counsel abandoned his case without informing him and that it was only when his appeal was dismissed by the Court of Appeals that he learned of his former counsel's withdrawal from the case.

He further contends that the exercise by the appellate court of the power to dismiss the appeal was not in accordance with the tenets of justice and fair play as he was denied his right to be heard on appeal.

He insists that the Court of Appeals should have excused the procedural lapse since strict compliance with the rules meant sacrificing justice for technicality. Considering that no material injury was suffered by the People of the Philippines by reason of the

delay in the filing of his brief, the appellate court should have allowed him to file it even beyond the reglementary period.

In his comment, the Solicitor General argues that the Court of Appeals acted correctly in issuing the assailed resolutions since: (a) the delay in filing the brief was not merely a matter of a few days or weeks but of more than one year; (b) for more than a year, petitioner negligently failed to exert effort to confer with his counsel about the progress of his appeal; (c) knowing the gravity of the offense and the severity of the penalty imposed on him, petitioner should have been diligent enough to communicate with his counsel concerning his case and (d) even though he filed a motion for reconsideration of the dismissal of his appeal, prudence dictated that, without waiting for the resolution of his motion, he should have filed his brief within a reasonable time. Clearly, petitioner failed to do what was reasonable under the circumstances, hence his appeal was rightly dismissed for the second time.

Petitioner, in his reply, retorts that he could not be expected to presume that the motion for reconsideration would be granted. His primordial concern then was for his appeal to be reinstated. Thus, before filing the requisite brief, he still had to wait for the order of the Court of Appeals reinstating the appeal.

We grant the petition.

Except for criminal cases where the penalty imposed is reclusion perpetua or death, an appeal from the judgment of the lower court is not a matter of right but of sound judicial discretion. The circulars of this Court prescribing technical and other procedural requirements are meant to promptly dispose of unmeritorious petitions that clog the docket and waste the time of the courts. These technical and procedural rules, however, are intended to ensure, not suppress, substantial justice. A deviation from their rigid enforcement may thus be allowed to attain their prime objective for, after all, the dispensation of justice is the core reason for the existence of courts.^[3]

It must be noted that, in the case at bar, it is not disputed that petitioner timely filed his notice of appeal and that the appellate court acquired jurisdiction over the case. Petitioner merely failed to submit

his appellant's brief within the period provided by the rules. A distinction should be made between the failure to file a notice of appeal within the reglementary period and the failure to file a brief within the period granted by the appellate court. The former results in the failure of the appellate court to acquire jurisdiction over the appealed decision resulting in its becoming final and executory upon failure of the appellant to move for reconsideration. The latter simply results in the abandonment of the appeal which can lead to its dismissal upon failure to move for its reconsideration.^[4]

In the instant case, when appellant learned about the dismissal of his appeal, he timely moved for its reconsideration on the ground that he had no knowledge that his counsel not only failed to file the required brief but actually withdrew as such without his consent. Apparently, the Court of Appeals did not act on petitioner's motion praying for the reinstatement of his appeal. Instead, it precipitately issued a resolution dismissing the appeal for the second time on the same ground - that petitioner was deemed to have abandoned his appeal. According to the Court of Appeals, forty-one (41) days from the filing of appellant's motion for reconsideration had already lapsed and no brief was ever filed. We hold, however, appellant not responsible therefor because he was waiting for the resolution of his motion for reconsideration. It must be recalled that, in his motion, he prayed for the reinstatement of his appeal and that he be given sufficient time to file his brief in the event of reinstatement of his appeal. It would have been improper therefore for appellant to presume the favorable outcome of the motion he filed. He was not expected to file his brief right after moving for the reconsideration of the dismissal of his appeal without an order from the court directing him to do so. In a considerable number of cases, the Court has deemed it fit to suspend its own rules or to exempt a particular case from its strict operation where the appellant fails to perfect his appeal within the reglementary period, resulting in the appellate court's failure to obtain jurisdiction over the case. With more reason, there should be a wider latitude in exempting a case from the strictures of procedural rules when the appellate court has already obtained jurisdiction over the appealed case and, as in this case, petitioner failed to file the appellant's brief.

This is not to say, however, that technical and procedural rules governing appeals, including those prescribing reglementary periods,

need not be observed at all or may be ignored at will. The remedy of appeal may be availed of only in the manner provided for by law and the rules. However, while, as a general rule, a review on appeal is not a matter of right but of sound judicial discretion and may be granted only when there are special and important reasons therefor, still it must be remembered that appeal is an essential part of our judicial system. Courts should thus proceed with extreme care so as not to deprive a party of this right. “Laws and rules should be interpreted and applied not in a vacuum or in isolated abstraction but in light of surrounding circumstances and attendant facts in order to afford justice to all.”^[5] The need to safeguard petitioners’ rights should caution courts against motu proprio dismissals of appeals, specially in criminal cases where the liberty of the accused is at stake. The rules allowing motu proprio dismissals merely confer a power and does not impose a duty; and the same is not mandatory but merely directory, which therefore requires a great deal of prudence, considering all the attendant circumstances.^[6] Thus, substantial justice would be better served by reinstating petitioner’s appeal.

Moreover, dismissal of an appeal on purely technical grounds is frowned upon since our general policy is to encourage hearings of appeals on their merits. This Court is therefore constrained to relax the rules to give way to the paramount and overriding interest of justice.

WHEREFORE, the instant petition is hereby **GRANTED**. The November 10, 2000 and January 31, 2001 resolutions of the Court of Appeals are **REVERSED** and **SET ASIDE**, and petitioner’s appeal is **REINSTATED**. Petitioner is hereby ordered to file his appellant’s brief in the Court of Appeals within a non-extendible period of fifteen days from receipt of this decision.

SO ORDERED.

Vitug, J., (Chairman), Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

[1] Penned by Associate Justice Alicia L. Santos and concurred in by Associate Justice Godardo A. Jacinto and Bernardo P. Abesamis.

[2] Rollo, p. 26.

[3] Acme Shoe, Rubber & Plastic Corporation vs. Court of Appeals, 260 SCRA 714 [1996].

[4] Development Bank of the Philippines vs. Court of Appeals, 358 SCRA 501 [2001].

[5] Magsaysay Lines, Inc. vs. Court of Appeals, 260 SCRA 513 [1996].

[6] Sapad vs. Court of Appeals, 348 SCRA 304 [2000].

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