

SECOND DIVISION

[G.R. No. 178405, October 15, 2008]

**REYNALDO DEUS Y SANTOS, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

TINGA, J.:

Assailed in this Petition for Review^[1] is the Resolution^[2] of the Court of Appeals dated 22 March 2007 in CA-G.R. SP No. 5585-UDK, as well as its 4 June 2007 Resolution^[3] dismissing the petition for certiorari filed by Reynaldo Deus y Santos (petitioner) appealing his conviction for the crime of illegal sale of *shabu*.

Records show that petitioner was charged with the offense of violation of Section 5, Article II of Republic Act (R.A.) No. 9165 in an information which reads:

That on or about the 28th day of October 2003, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without the corresponding license or prescription did then and there willfully, unlawfully and feloniously sell, give away, distribute and deliver zero point zero one (0.01) gram of Methylamphetamine Hydrochloride (*shabu*), which is a dangerous drug.

CONTRARY TO LAW.^[4]

The facts according to the evidence for the prosecution follow.

Acting on an informant's tip, a buy-bust team was formed composed of SPO1 Jose Magallanes, its team leader, with PO2 Virginio Costa (PO2 Costa) as the poseur-buyer, and back-up, PO1 Randy Santos (PO1 Santos). On 28 October 2003, the team conducted an anti-narcotics operation on 3rd Street, Barangay Pembo in Makati. The subject was a certain Jake, who was later identified as petitioner.^[5] They saw petitioner standing in front of his house talking to an unidentified person. PO2 Costa and the informant approached petitioner and offered to buy *shabu* from him.

Upon completion of the transaction, PO2 Costa wiped his face as a pre-arranged signal to the back-up team. PO1 Santos immediately approached the area, arrested and handcuffed petitioner. While in handcuffs, petitioner tried to run away but PO2 Costa and PO1 Santos foiled his escape. On their way to the police car, PO2 Costa was stabbed in his left arm by Ofelia Gajardo (Gajardo), the live-in partner of petitioner, while other bystanders were preventing them from taking petitioner away.^[6] PO1 Santos fired a warning shot and they succeeded in bringing petitioner to the Drug Enforcement Unit (DEU) office where markings were put on the *shabu* by PO2 Costa.^[7] Thereafter, the plastic sachet was brought to the Philippine National Police Crime Laboratory for examination.

In her Physical Science Report dated 28 October 2003, Sharon Lontoc Fabros, a forensic chemist, found that the specimen submitted to her was Methylamphetamine Hydrochloride, otherwise known as *shabu*.^[8]

On the other hand, the defense presented a different version of the incident. Petitioner claimed that on the date and time aforesaid, three armed men and a woman entered his house through the kitchen.

They poked a gun at petitioner and accused him of selling illegal drugs.^[9] Petitioner's stepdaughter, Anabelle Manlangit shouted for help. Gajardo came down from the second floor and saw that petitioner was being dragged out of the house and forcibly taken into a vehicle. Petitioner was subsequently brought to the DEU office while Gajardo was taken to the Criminal Investigation Division (CID).^[10] Petitioner denied that he was selling *shabu* at the time he was arrested and that he saw the plastic sachet with marking "RDS" only at the fsdCID.

On 17 May 2006, the Regional Trial Court rendered judgment^[11] finding petitioner guilty of violation of Section 5, Article II of R.A. No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P400,000.00.^[12]

The trial court held that the prosecution was able to establish the elements of illegal sale of *shabu* through the testimony of its witnesses. The trial court noted in contrast that the version of the defense is fraught with inconsistencies.^[13]

Petitioner, unassisted by counsel, filed a very urgent motion for reconsideration^[14] which the trial court denied on 17 May 2006.

On 24 August 2006, petitioner filed a petition for certiorari^[15] under Rule 65 before the Court of Appeals, as well as a motion to litigate as pauper.^[16] He raised as issue the failure of the trial court judge to comply with Rule 118 of the Rules on Criminal Procedure requiring that the pre-trial order be signed by the accused and his counsel.^[17] He likewise questioned the police operatives' non-compliance with Section 21 (1) of R.A. No. 9165.^[18]

In a Resolution dated 1 September 2006, the appellate court appointed and designated the Public Attorney's Office (PAO) as counsel *de oficio* for petitioner.^[19]

The PAO filed its Notice of Appearance on 19 September 2006.^[20] On 16 November 2006, the appellate court furnished the PAO a copy of the petition and ordered the latter to file the appropriate pleading within ten days from notice.^[21]

The PAO's counsel filed two manifestations with motion for extension of 30 days each, within which to comply with the appellate court's resolution, on 7 December 2006^[22] and 12 January 2007,^[23] respectively. The appellate court granted the manifestations with motions.^[24] After failing to file the appropriate pleading within the third extended period, on 9 March 2007, the PAO filed a motion to admit the petition for certiorari attached thereto.^[25]

On 22 March 2007, the Court of Appeals issued the challenged decision dismissing the petition. It reads:

In the higher interest of justice, the petition for certiorari filed by PAO is **ADMITTED** and submitted for initial action.

A perusal of the petition, however, reveals that the assailed Decision was rendered by the Regional Trial Court (RTC) of Makati City, Branch 64, in the exercise of its original jurisdiction. As such, the proper remedy for a party aggrieved thereby is an ordinary appeal pursuant to Sections 3 and 6, Rule 122 of the Revised Rules on Criminal Procedure as amended, which can be availed of by filing a notice of appeal

with the court which rendered the judgment, within fifteen (15) days from notice thereof,. However, instead of filing an appeal within 15 days from notice of the denial of his motion for reconsideration of the subject decision on June 24, 2006, accused-petitioner resorted to the instant petition for certiorari which the Court cannot treat as an appeal for having been filed on August 24, 2006 or way beyond the period to appeal.^[26]

Petitioner moved for reconsideration^[27] but the appellate court denied the motion for lack of merit on 4 June 2007.^[28]

Petitioner now comes to this Court via this petition for review.^[29] He urges the application of Section 8, Rule 124 of the Rules of Court by analogy to the petition for certiorari filed before the Court of Appeals. He argues that the appellate court should not have dismissed his petition since he was represented by a counsel *de officio*. Essentially, he appeals for a liberal interpretation of the rules of procedure in the interest of substantial justice.^[30]

On 10 September 2007, this Court issued a resolution requiring the Office of the Solicitor General (OSG) to file its comment.^[31]

The OSG maintains that petitioner should have availed of the remedy of appeal instead of filing a petition for certiorari under Rule 65. However, it concedes that since petitioner acted without the assistance of counsel when he filed his urgent motion for reconsideration of the trial court's judgment of conviction and the special civil action for certiorari before the Court of Appeals, the appellate court should have, in the interest of justice, treated the petition as an appeal instead of dismissing the same.^[32]

The crux of the controversy in this petition is not the trial court's judgment of conviction but the appellate court's dismissal of the petition for certiorari essentially questioning the judgment of conviction.

Basic is the rule that the mode of appeal in cases decided by the regional trial court in the exercise of its original jurisdiction is by a notice of appeal with the court which rendered the judgment appealed from.^[33] On the other hand, the extraordinary remedies of certiorari, prohibition and mandamus are available only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. The writ of certiorari does not lie where an appeal may be taken or where another adequate remedy is available for the correction of the error.^[34]

Since the judgment of conviction had not been appealed within the time and in the manner prescribed by the rules, it became final and executory upon the lapse of the reglementary appeal period.

Petitioner likewise erred in contending that Section 8, Rule 124 of the Rules of Court prohibits the dismissal of the certiorari petition when appellant is represented by a counsel *de officio*. First, said provision only refers to dismissal of **appeal** for abandonment or failure to prosecute. Second, the dismissal of the appeal is conditioned on the appellant's failure to file a brief. An appellant's brief is a pleading filed in an ordinary appeal. Clearly, Section 8 contemplates an ordinary appeal filed before the Court of Appeals.

The aforecited legal principles notwithstanding, we agree with the OSG that the appellate court should have treated the certiorari petition as an appeal.

Petitioner was not represented by counsel when he filed the petition for certiorari before the Court of Appeals. Thus, he cannot be presumed to know the legal remedies to take in pursuing his appeal. Moreover, his right to liberty is at stake. These attending circumstances should have

spurred the appellate court to relax the rules of procedure in the interest of substantial justice. It should have extended the same liberality it evinced in granting the two motions for extension filed by petitioner.

Hence, the dismissal of the petition on the basis of a technicality should be set aside. The Court of Appeals should be directed to resolve the petition, treated as an ordinary appeal, on the merits.

WHEREFORE, the petition is GRANTED. The Resolution of the Court of Appeals dated 22 March 2007 is REVERSED AND SET ASIDE. This case is remanded to the Court of Appeals which is directed to resolve the petition dated 9 March 2007 filed before it by the petitioner, on the merits as an ordinary appeal with deliberate dispatch.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., Concur.

[1] *Rollo*, pp. 9-23.

[2] *Id.* at 58-60. Penned by Associate Justice Estela M. Perlas-Bernabe, and concurred in by Associate Justices Rodrigo V. Cosico and Lucas D. Bersamin.

[3] *Id.* at 61.

[4] *CA rollo*, p. 30.

[5] TSN, 8 July 2004, p. 3.

[6] TSN, 24 August 2004, pp. 6-9.

[7] TSN, 8 July 2004, pp. 7-8.

[8] Records, p. 12.

[9] TSN, 22 September 2005, pp. 5-7.

[10] TSN, 29 November 2005, pp. 5-7.

[11] *Rollo*, pp. 56-57; Penned by Judge Delia H. Panganiban.

[12] *Rollo*, p. 50.

[13] *Id.*

[14] Records, pp. 130-133.

[15] *CA rollo*, pp. 3-17.

[16] *Id.* at 2.

[17] *Id.* at 13.

[18] CA *rollo*, pp. 3-17. Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*--The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

[19] *Id.* at 59-60.

[20] CA *rollo*, pp. 56-57.

[21] *Id.* at 63.

[22] *Id.* at 64-65.

[23] *Id.* at 67-70.

[24] *Id.* at 71.

[25] *Id.* at 75-76.

[26] *Rollo*, p. 59.

[27] CA *rollo*, pp. 110-115.

[28] *Supra* note 3.

[29] *Supra* note 1.

[30] *Id.* at 17-19.

[31] *Id.* at 62.

[32] *Id.* at 75-76.

[33] Rules of Court, Rule 122, Sec. 3(a).

[34] *Dwikarna v. Domingo*, G.R. No. 153454, 7 July 2004, 433 SCRA 748, 754 citing *Marawi Marantao General Hospital, Inc. v. Court of Appeals*, 349 SCRA 321 (2001); *Heirs of Pedro Atega v. Garilao*, 357 SCRA 203 (2001); *Zarate, Jr. v. Olegario*, 263 SCRA 1 (1996); *Filoteo, Jr. v. Sandiganbayan*, 263 SCRA 222 (1996); *Solis v. National Labor Relations Commission*, 263 SCRA 629 (1996); *Ongsitco v. Court of Appeals*, 255 SCRA 703 (1996).

