

THIRD DIVISION

[G.R. No. 180299, January 31, 2008]

LYNDON D. BOISER, Petitioner, vs. PEOPLE OF THE PHILIPPINES,
[1] Respondent.

R E S O L U T I O N

NACHURA, J.:

Before the Court is a petition for review on *certiorari*^[2] assailing the Decision of the Court of Appeals (CA), dated June 5, 2007 in CA-G.R. CEB-SP. No. 02368.^[3]

The main issue in this case is whether the CA committed reversible error in affirming the decision of the RTC which denied petitioner's omnibus motion to quash the informations filed against him.

Based on the findings of the CA, the pertinent facts of the case are as follows:

On June 4, 2004, three (3) Informations were filed against petitioner, charging him with acts of lasciviousness, other acts of child abuse, and rape^[4] of minor AAA before the Regional Trial Court (RTC), Branch 1, Tagbilaran, Bohol.

On June 11, 2004, petitioner filed a Motion praying that a hearing be conducted to determine the existence of probable cause and to hold in abeyance the issuance of a warrant of arrest against him. On June 16, 2004, private respondent filed an Opposition thereto.

On June, 18, 2004, the family court issued three (3) separate Orders in the three (3) criminal cases, directing the prosecution to submit additional evidence on the cases along with the transcript of proceedings during the preliminary investigation. On June 20, 2004, the prosecutor filed a Manifestation saying that the prosecution had no additional evidence to present and that due to the non-availability of a stenographer who could take down notes during the preliminary investigation on April 28, 2004 and May 7, 2004, he personally took down notes, and submitted certified photocopies of the same to the court. On July 2, 2004, the family court directed the City Prosecution Office in Tagbilaran City to complete the preliminary investigation in a regular manner with duly recorded proceedings attended by a stenographer. On August 4, 2004, a Reinvestigation Report was submitted by the prosecutor maintaining the existence of probable cause in the three cases.

On August 9, 2004, petitioner filed an Omnibus Motion for Determination of Probable Cause. On September 10, 2004, the family court issued three (3) separate Orders finding probable cause against petitioner in the three (3) cases, issued a warrant of arrest against him and fixed the corresponding bail for each case. On November 19 and 24, 2004, petitioner filed Motions to Inhibit the judge of Branch 1

from hearing the 3 cases. The judge acceded. Thereafter, the cases were raffled to Branch 2 of the same court. On March 1, 2005, petitioner again filed a Motion to Inhibit the judge of Branch 2. The same was granted and the case was raffled to Branch 4 of the same court. Then again, petitioner filed a Motion to Inhibit the Judge of Branch 4. The three (3) cases were then raffled to Branch 49 of the said court.

On August 19, 2005, petitioner filed an Omnibus Motion to Quash the three (3) Informations to which private respondent filed an Opposition. On June 30, 2006, Branch 49 issued a Joint Order denying the aforesaid motion. A Motion for Reconsideration was filed by petitioner citing absence of probable cause and lack of jurisdiction over his person as grounds in support of his motion. However, upon the request of private respondent's parents, the Judge of Branch 49 inhibited himself from hearing the three (3) cases. Finally, the cases were raffled to Branch 3 of the RTC of Tagbilaran City, Bohol, presided over by Judge Venancio J. Amila (Judge Amila).

On November 6, 2006, the lower court issued an Omnibus Order denying petitioner's omnibus motion for reconsideration to quash the informations. On November 22, 2006, petitioner filed anew an Urgent Omnibus Motion to Quash. On November 30, 2006, the RTC issued an Order denying the second omnibus motion to quash, and set the arraignment on December 15, 2006. A day before the arraignment, petitioner filed a Second Omnibus Motion for Reconsideration of the order denying his motion to quash.

On December 15, 2006, petitioner reminded Judge Amila of his second omnibus motion for reconsideration. Judge Amila, in open court, denied for lack of merit the second omnibus motion for reconsideration. Upon arraignment, petitioner refused to enter a plea for the 3 cases. Accordingly, a plea of not guilty was entered for petitioner for each of the 3 criminal cases.

On January 2, 2007, petitioner filed a Petition for *certiorari*^[5] before the CA claiming that the family court acted with grave abuse of discretion in issuing the orders denying his omnibus motions to quash the informations.

On June 5, 2007, the CA rendered a Decision^[6] affirming the Orders of the RTC. In denying the petition, the CA ratiocinated that it cannot reverse the RTC orders because: (1) an order denying a motion to quash is interlocutory and not appealable; and (2) the petitioner failed to positively prove grave abuse of discretion on the part of the RTC judge in the issuance of the assailed orders. The *fallo* of the Decision reads:

WHEREFORE, premises considered, the petition is hereby **DENIED**. The assailed orders of the respondent judge are hereby **AFFIRMED**.

Costs against the petitioner.

SO ORDERED.^[7]

A motion for reconsideration was filed by petitioner which the CA denied in a Resolution^[8] dated September 19, 2007.