

## FIRST DIVISION

[ G.R. NO. 169091, February 16, 2006 ]

**DATU EDUARDO AMPO, PETITIONER, VS. THE HONORABLE  
COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This petition for certiorari seeks to reverse and set aside the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated May 16, 2002 in CA-G.R. CR No. 21738 which affirmed the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Butuan City, Branch 1, dated December 10, 1997, in Crim. Case No. 5294 finding petitioner guilty of violation of Commission on Elections (COMELEC) Resolution No. 2323 (Gun Ban). The CA decision became final and executory on November 16, 2003 and was recorded in the Book of Entries of Judgment.

The records show that in December 1991, the COMELEC issued Resolution No. 2323, also referred to as the Gun Ban, in connection with the synchronized national and local elections on May 11, 1992. In the morning of January 20, 1992, a team of Philippine National Police (PNP) officers who were manning the national highway of Santiago, Agusan del Norte flagged down petitioner because a homemade .45-caliber pistol was seen tucked in his waist.

SPO1 Mario Belliones, one of the police officers manning the checkpoint in Santiago, testified that petitioner failed to present the necessary documents permitting him to carry firearm during the election period when asked to produce the same.

SPO1 Tex Ariston Maghanoy also testified that during the investigation subsequently conducted, he inquired from petitioner about his authorization to carry the handgun but the latter allegedly explained that he left the memorandum receipt for the gun at his house. Petitioner also failed to present a permit to carry from the COMELEC. Thus, SPO1 Maghanoy recovered the handgun from petitioner and issued a temporary receipt for it. Later, on January 27, 1992, SPO1 Maghanoy, together with another police officer, went to petitioner's house and asked for the memorandum receipt or a COMELEC permit to carry the gun. Petitioner failed to produce any permit, thus, SPO1 Maghanoy issued another receipt stating therein that the firearm was being "confiscated" to formally terminate the investigation.

Petitioner insisted that the firearm was covered by a memorandum receipt issued on August 20, 1991. He admitted, however, that he did not have a permit from the COMELEC to carry the firearm. He claimed that in the morning of January 20, 1992, he was on his way to Camp Bancasi to surrender the firearm when he was accosted by the police officers.

On December 10, 1997, the RTC of Butuan City, Branch 1, rendered its decision finding petitioner guilty of the violation, to wit:

WHEREFORE, in view of the foregoing, after considering the evidence offered, this Court finds the accused Eduardo Ampo GUILTY of the crime of violation of COMELEC Resolution No. 2323.

As a consequence, he shall suffer the penalty of imprisonment for one year and will not be qualified to avail of the privilege of the probation law.

He shall be disqualified from holding public office and shall be deprived of the right of suffrage for a period of four (4) years from the date he begins to serve his sentence.

He shall serve his entire sentence at the Provincial Jail in Libertad, Butuan City.

IT IS SO ORDERED.<sup>[3]</sup>

Petitioner appealed to the Court of Appeals which affirmed the findings of the trial court in a decision dated May 16, 2002. The decision became final and executory on November 21, 2002 and recorded in the Book of Entries of Judgments.<sup>[4]</sup>

On April 20, 2005,<sup>[5]</sup> petitioner received from the RTC of Butuan City a Notice of the Promulgation of Judgment<sup>[6]</sup> scheduled on May 5, 2005. On June 17, 2005, petitioner filed the instant petition under Rule 65 of the Rules of Court.

Petitioner claims that when the appellate court promulgated its decision on May 16, 2002, his counsel, Atty. Paquito A. Arjona has been dead since May 15, 2001 without his knowledge. He claims that it was only upon receipt of the notice from the RTC on April 20, 2005 informing him of the promulgation of the decision that he knew of the appellate court's adverse decision as well as his counsel's death. Hence, petitioner asserts that such lack of notice regarding the decision, occasioned by the death of his lawyer, deprived him of due process and a chance to file a motion for reconsideration.

At the same time, petitioner argues that the decision is contrary to established jurisprudence and not supported by the evidence presented. He maintains that the two receipts presented by the prosecution are conflicting. He claims that the first receipt was valid as it was issued at the time the incident happened and by the officer who actually received the firearm. He however insists that the second receipt should not have been given credence considering that it was issued seven days after the incident by a police officer who did not actually receive the same.

The petition lacks merit.

A petition for relief from judgment is the proper remedy of a party seeking to set aside a judgment rendered against him by a court whenever he was unjustly deprived of a hearing or was prevented from taking an appeal, in either case, because of fraud, accident, mistake or excusable neglect.<sup>[7]</sup> The petition for relief should be filed within 60 days after the petitioner learns of the judgment or order, or

other proceeding to be set aside, and not more than six months after such judgment.<sup>[8]</sup> Both periods must concur and are not extendible and never interrupted. Strict compliance with these periods stems from the equitable character and nature of the petition for relief. Indeed, relief is allowed only in exceptional cases as when there is no other available or adequate remedy. A petition for relief is actually the "last chance" given by law to litigants to question a final judgment or order. Failure to avail of such "last chance" within the grace period fixed by the Rules of Court is fatal.<sup>[9]</sup>

In the case at bar, the evidence shows that the instant petition was filed on June 17, 2005, definitely beyond the six-month period from entry of judgment on November 21, 2002.

We are not persuaded by petitioner's argument that he was not aware that his counsel had died or that an adverse judgment had already been rendered until he received the notice of promulgation from the RTC of Butuan City on April 20, 2005. Time and again we have stated that equity aids the vigilant, not those who slumber on their rights.<sup>[10]</sup> Petitioner should have taken it upon himself to periodically keep in touch with his counsel, check with the court, and inquire about the status of the case.<sup>[11]</sup> Had petitioner been more prudent, he would have found out sooner about the death of his counsel and would have taken the necessary steps to prevent his present predicament.

However, petitioner's lack of zeal to see the termination of his case is quite consistent and apparent. From the time the judgment was rendered on May 16, 2002 until petitioner learned of it on April 20, 2005, a period of almost three years had lapsed without any indication that petitioner kept in touch with his counsel or made inquiries regarding the status of the case.

Litigants who are represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their cases.<sup>[12]</sup> Relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence.<sup>[13]</sup> The circumstances of this case plainly show that petitioner only has himself to blame. Neither can he invoke due process. The essence of due process is simply an opportunity to be heard.<sup>[14]</sup> Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy.<sup>[15]</sup> Where a party, such as petitioner, was afforded this opportunity to participate but failed to do so, he cannot complain of deprivation of due process. If said opportunity is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.<sup>[16]</sup>

Even if we grant the instant petition and allow petitioner to move for the reconsideration of the assailed judgment, we find no error in the decisions rendered by the appellate court and the trial court. As correctly ruled by the lower court, the testimonies of the police officers in this case are credible and their actions enjoy the presumption of regularity in the performance of official duties, especially where no ill motive or bad faith on their part has been alleged or proven. The evidence sufficiently established that petitioner was accosted for carrying a firearm during the election period without the required authorization.