

THIRD DIVISION

[G.R. No. 134981, June 18, 2003]

FREDELITO P. VITTO, PETITIONER, VS. THE HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for certiorari^[1] seeking to set aside the Resolution dated August 6, 1998 of the Court of Appeals in CA-G.R. CR No. 20245, "*People of the Philippines vs. Danilo Pajaron, et al.*," denying petitioner Fredelito P. Vitto's Motion For Leave Of Court To File Appellant's Brief.

The facts are as follows:

Fredelito Vitto, petitioner, together with Vic O. Pizarro and Danilo P. Pajaron, were charged with homicide under an Information filed with the Regional Trial Court, Branch 117, Pasay City, docketed as Criminal Case No. 94-5749.

After hearing, or on October 23, 1996, the trial court rendered a decision^[2] convicting all the accused of homicide and sentencing them to six (6) years, four (4) months and ten (10) days of *prision mayor*, as minimum, to twelve (12) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

All the accused interposed an appeal to the Court of Appeals, docketed as CA-G.R. CR No. 20245. Since then, they have remained at large for failure to post bail on appeal.

On November 13, 1997, the Court of Appeals issued a Resolution^[3] requiring them to explain why their appeal should not be deemed abandoned in view of their failure "to submit themselves to the proper authorities" during the pendency of their appeal.

On December 1, 1997, petitioner, through counsel *de parte*, submitted his explanation stating that he was not aware that he should surrender to the Court of Appeals. His counsel then requested an additional period, or up to December 20, 1997, within which (a) to contact the accused who is in Mindoro and advise him to submit himself to the jurisdiction of the Court of Appeals; and (b) to file the appellant's brief.^[4]

However, petitioner did not present himself to the Appellate Court within the period requested by his counsel. Neither did he file an appellant's brief. Thus, on March 31, 1998, the court issued a Resolution^[5] dismissing the appeal.

On July 21, 1998, petitioner, through counsel, filed a Motion For Leave Of Court To File Appellant's Brief stating that his failure "to surrender himself to the authorities" and to file the brief within the time requested was because he works in a remote farm in Mindoro and has no sufficient funds to pay for his transportation to Metro Manila.

In a Resolution dated August 6, 1998, the Court of Appeals denied petitioner's motion, thus:

"As the Resolution of March 31, 1998 dismissing the respective appeals of the accused-appellants **had already become final and executory on May 5, 1998 insofar as the accused-appellant Fredelito Vitto is concerned, the Motion for Leave of Court to File Appellant's Brief filed by his counsel only on July 21, 1998 is DENIED outright."**^[6]

Hence, this petition.

Petitioner contends that the Court of Appeals committed grave abuse of discretion amounting to lack of jurisdiction in denying his Motion For Leave Of Court To File Appellant's Brief. He thus prays that the application of the Rules of Court be suspended in his favor and that his brief be admitted considering his predicament.

In his comment on the petition, the Solicitor General prayed that the petition be denied for being unmeritorious.

Section 8, Rule 124 of the Revised Rules of Criminal Procedure of 2000 provides:

"Sec. 8. Dismissal of appeal for abandonment or failure to prosecute. — The Court of Appeals may, upon motion of the appellee or motu proprio and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel de oficio.

"The Court of Appeals may also, upon motion of the appellee or motu proprio, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal. (8a)"

In *People vs. Potajo*,^[7] we held that an appeal by the accused is considered abandoned where he fails to properly prosecute his appeal or does some act inconsistent with its prosecution, such as when he refuses to submit himself to the jurisdiction of the authorities.^[8]

In the present case, the record shows that petitioner, through counsel, asked the Court of Appeals for an extension until December 20, 1997 within which to submit himself before it and to file the appellant's brief.^[9] However, petitioner failed to comply with his commitment. Such omission is fatal to his appeal.^[10] Thus, the Court of Appeals, in its Resolution of March 31, 1998, considered petitioner's appeal as having been abandoned and consequently dismissed the same. The Resolution became final and executory on May 5, 1998.^[11] As such, the Appellate Court, in its assailed Resolution dated August 6, 1998, correctly denied petitioner's subsequent Motion For Leave To File Appellant's Brief submitted on July 21, 1998, or more than