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THE DEMOCRATIC REPUBLIC OF EAST TIMOR

DILI DISTRICT COURT

THE SPECIAL PANELS FOR SERIOUS CRIMES

Before:
Judge Phillip Rapoza

CASE NO. 05/2002

DEPUTY GENERAL PROSECUTOR FOR SERIOUS CRIMES

-AGAINST-

UMBERTOS ENA

**Decision on the Prosecutor's Request to Dismiss
the Defendant's Notice of Appeal**

For the Prosecutor:
Charles Nsabimana

For the Defendant:
Ana Beatriz Sanchez

I. PROCEDURAL BACKGROUND

1. On 23 March 2004, the Special Panel filed a three page "Disposition of the Decision" declaring the Defendant's conviction and sentence following trial. The disposition was served on the parties the same day.
2. On 10 May 2004, the Special Panel filed a twenty-six page "Judgement" into which the previous disposition was copied and pasted. The "Judgement" was served on the parties the same day.¹
3. On 19 May 2004, counsel for the Defendant filed a one page Notice of Appeal ("Vontade de Recorrer") with the Registry.
4. On 25 May 2004, the Prosecutor filed a three page response to the Notice of Appeal, asserting that the notice had not been submitted in a timely fashion after the filing of the "Disposition of the Decision" on 23 March 2004. Accordingly, the Prosecutor requested that the Special Panel dismiss the Defendant's Notice of Appeal.
5. On 26 May 2004, the Judge Administrator designated Judge Phillip Rapoza to rule on the Prosecutor's request to dismiss the Defendant's Notice of Appeal, as the presiding judge of the original panel had left Timor-Leste.
6. On 1 June 2004, counsel for the Defendant filed a four page reply to the Prosecutor's response claiming that the appeal had been timely filed following the entry of the "Judgement" on 10 May 2004.
7. On 2 June 2004, the Prosecutor made a submission to the Court stating that the Notice of Appeal should have been filed within ten days of the "Disposition of Decision" filed on 23 March 2004, on the ground that the Notice "is just to show the intention to appeal." Moreover, since "it does not...contain the grounds for appeal [it need not] wait or refer to the full judgment from which the grounds for appeal can be taken." See Court File p. 1160.
8. On 3 June 2004, counsel for the Defendant made a submission to the Court stating: "An 'intention to appeal' must be based on grounds flowing [from] a final decision, after careful analysis of the decision, not on abstract notions." See Court File p. 1161.

¹ As indicated, the original disposition dated 23 March 2004 was copied and pasted into the subsequent "Judgement." Consequently, the latter document bears the same date, although it appears certain that it was filed with the Registry at a later point. Although the "Judgement" was not date-stamped upon filing, it was served on both parties on 10 May 2004, as indicated by the official notification found at p. 1143 of the court file. As the previous "Disposition of the Decision" was delivered to the parties and filed on the same day, it is reasonable to infer that the same procedure was followed with respect to the "Judgement." Accordingly, the Court concludes that the Special Panel submitted the "Judgement" to the Registry on 10 May 2004, the date of notification to the parties. In any event, the Prosecutor does not raise any issue concerning the date on which the Special Panel filed its "Judgement."

II. DISCUSSION

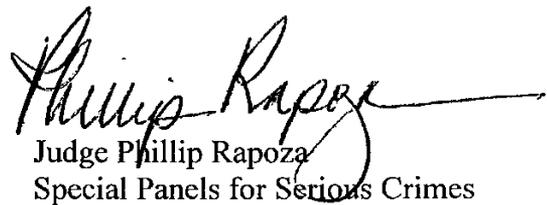
1. In every case following a trial, “[t]he Court shall prepare a final written decision” as required by Section 39.3 of UNTAET Regulation No. 2000/30 (hereinafter, the “Transitional Rules of Criminal Procedure” or “TRCP”).
2. The right to appeal, as it pertains to this case, is articulated in TRCP Section 40 (“Appeal from Final Decisions”) and presupposes the release of a final written decision by the court of first instance. See TRCP Section 39.4 and Section 40.1.
3. The “final written decision” required by the rules of criminal procedure “shall contain the following elements” as contained in TRCP Section 39.3(a)-(k):
 - (a) the identification of the Court, the identity of the judges and the identification of the parties;
 - (b) an account of the events and circumstances of the case tried by the Court;
 - (c) an account of the facts that the court considered proved and facts that were not proved;
 - (d) an account of the factual and legal grounds of those considerations;
 - (e) a finding in relation to the innocence or guilt of the accused identifying the section applied of the penal legislation;
 - (f) an order relating to the penalty if the accused is found guilty;
 - (g) an order relating to the costs of the trial;
 - (h) an order relating to the disposal of physical evidence seized during the investigations;
 - (i) an order pursuant to Section 50.2, if applicable [victim compensation];
 - (j) an order pursuant to Section 52.2, if applicable [compensation for miscarriage of justice]; and
 - (k) the signatures of all judges.
4. Every party has the right to appeal a “final decision” of the Special Panels to the Court of Appeal. TRCP Section 40 (“Appeal from Final Decisions”). A party who seeks to appeal a decision of the Special Panels “shall commence an appeal by filing a Notice of Appeal ... The Notice of Appeal shall be filed no more than ten (10) days after the appealed decision is released.” TRCP Section 40.2.
5. Accordingly, the ten (10) day period for the filing of a Notice of Appeal begins to run from the date upon which the final written decision is released. TRCP Section 40.2.
6. The question before the Court is whether the three page “Disposition of the Decision” in the present case constituted a final written decision within the

- meaning of TRCP Section 39, such that its filing on 23 March 2004 triggered the ten (10) day filing period for a Notice of Appeal as provided in TRCP Section 40.2. In the circumstances of this case, the Court concludes that it did not.
7. The "Disposition of the Decision" in the present case did little more than announce the Special Panel's verdict of guilty against the Defendant on two counts and state the Defendant's sentence. The document also provided for the assessment of costs of the proceedings, gave the Defendant credit for the period of his detention awaiting trial and ordered that the sentence be executed immediately.
 8. Whatever practical benefit the panel or the parties may have derived from the initial "Disposition of Decision," that document fell short of a "final written decision." It did not contain a number of the elements required of such a decision by the rules of criminal procedure, including: an account of the events and circumstances of the case tried by the Court, as required by TRCP Section 39.3(b); an account of the facts that the court considered proved and facts that were not proved, as required by TRCP Section 39.3(c); and an account of the factual and legal grounds of those considerations, as required by TRCP Section 39.3(d).
 9. These missing elements are significant, as a party's decision to appeal will be determined by whether or not the party has reasonable grounds to appeal.
 10. An appeal may be filed on one or more of the following grounds pursuant to TRCP Section 40.1 (a)-(d):
 - (a) a violation of the rules of criminal procedure;
 - (b) a violation of the procedural or substantive rights of the accused;
 - (c) inconsistency within grounds of the decision;
 - (d) material error of law or fact.
 11. A party cannot effectively determine whether one of the above-stated grounds for appeal applies to his case unless he is aware of the basis for the court's decision. In the present case, the basis for the Defendant's conviction and for the sentence imposed does not appear in the original "Disposition of Decision" filed on 23 March 2004, but does appear in the subsequent "Judgement" filed on 10 May 2004. The "Judgement" also contains the elements required of a "final written decision" as set out in TRCP Section 39.3
 12. Although the "Disposition of Decision" was a decision of the Special Panel, it was not a "final written decision" within the meaning of TRCP Section 39.3 (a) – (k). Accordingly, its filing on 23 March 2004 did not trigger the ten (10) day filing period for a Notice of Appeal as provided in TRCP Section 40.2.

13. As the "Judgement" filed on 10 May 2004 did constitute a "final written decision" of the Special Panel, the ten (10) day filing period for a Notice of Appeal commenced on that date, running until 20 May 2004.
14. The Defendant, having submitted his Notice of Appeal to the Registry on 19 May 2004, filed the notice in a timely fashion and within the ten (10) day filing period for such notice as provided in TRCP Section 40.2.

III. CONCLUSION

The Defendant submitted his Notice of Appeal to the Registry within the ten (10) day filing period provided in TRCP Section 40.2. Accordingly, the Prosecutor's request that the defendant's Notice of Appeal be dismissed is hereby DENIED.


Judge Phillip Rapoza
Special Panels for Serious Crimes

Date: 17 June 2004