IMPLEMENTING AN EFFECTIVE CERTIORARI JURISDICTION*

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I.

Appellate jurisdiction refers to a court's power to review the decisions of lower courts. Its essence, as Chief Justice Marshall said in the famous case of *Marbury v. Madison*[1] is that "it revises and corrects the proceedings in a cause already instituted and does not create that cause." It is the opposite of original jurisdiction, which is the power to hear and decide cases in the first instance. In the Philippine judicial system, appellate jurisdiction is exercised by the Supreme Court, the Court of Appeals, the Regional Trial Courts, the Sandiganbayan, the Court of Tax Appeals, and the Shari'a District Courts, with respect to the decisions of courts and quasi-judicial agencies below them.

APPEAL DISTINGUISHED FROM CERTIORARI

Art. VIII, § 5(2) of the Constitution defines the Supreme Court's appellate jurisdiction. However, this is subject to the power of Congress under to "define, prescribe and apportion the jurisdiction of the various courts," though Congress cannot deprive the Supreme Court of its jurisdiction as provided in the Constitution. Nor can it increase the appellate jurisdiction of the Court without the latter's advice and concurrence.[2]

As provided by the Constitution, the Court's appellate jurisdiction may be exercised through appeal or through certiorari, as the law or the Rules of Court may provide. Appeal and certiorari are different in that jurisdiction under the former is mandatory or obligatory,[3] and requires a review by the Court of the record and the transcript.[4] In contrast, review by certiorari is discretionary,[5] and confined to questions of law. It will not be granted unless it meets the criteria set forth in Rule 45, § 6.

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[1] 5 U.S. (1 Cranch) 137, 176 (1803).

[2] CONST. art. VIII, § 2; art. VI, § 30.

[3] RULES OF COURT, Rule 123, § 3 (c), (d).

[4] *Id.* § 10.

Through a system of appeals, even the decision of the lowest court in the judicial hierarchy is in theory subject to review by the Supreme Court. This makes the Supreme Court the court of last resort and the last word on any question raised to it. It is the appellate jurisdiction – not the original jurisdiction – which makes the Supreme Court the highest court. Indeed, in countries where there are constitutional courts, such as Germany, Italy, France and Spain, Constitutional Courts are not the highest courts but the Supreme Courts of those countries. Constitutional courts, which decide only constitutional questions referred to them by other courts and by administrative authorities, do not exercise appellate jurisdiction over other courts.

If the Supreme Court were relieved of its original jurisdiction, leaving to it purely appellate jurisdiction, the Supreme Tribunal would be none the worse for the loss. But if it lost its appellate jurisdiction it would not be a Supreme Court anymore, save in name; it would no longer be a court of last resort. Freed from the supervisory power of the Supreme Court, lower courts would no longer be bound by its decisions under the principle of *stare decisis*.

Thus, the Supreme Court is the highest court of the land because it is placed at the head of a hierarchy of courts and that it exercises appellate jurisdiction over the decisions of the lower courts.

II.

If I am right about the importance of the appellate jurisdiction, how can we make it effective? What can judges involved in the appeals process do to utilize the appellate jurisdiction to its fullest? The Supreme Court's time and resources should be devoted to the development and elucidation of the law in its most profound aspects. To be able to fulfill this function, it should have full opportunity for research, reflection and consultation. Nothing short of this can invest a tribunal with the attribute and status of being the Supreme Court, nothing short of performing in a superior degree its responsibility of maintaining the constitutional order and protecting individual rights.

The title "Supreme Court" will not make it the highest court. In New York, for example, the highest court is not the Supreme Court but the Court of Appeals. There, the Supreme Court is just the principal trial court. It is therefore necessary that the Court's appellate jurisdiction be made to extend only to cases that, by the questions they raise, transcend the immediate interests of the parties. Certiorari jurisdiction is eminently fitted for this purpose.

ORIGIN OF THE SUPREME COURT'S CERTIORARI JURISDICTION

As already stated, under the Constitution, the appellate jurisdiction of the Supreme Court may be exercised either by certiorari or by appeal, as Congress by law or the Supreme Court by the Rules of Court may determine. Review by certiorari was provided for the first time in the 1935 Constitution. Previous organic acts only provided for ordinary appeal and writ of error as modes of exercising the Court's appellate jurisdiction.[6]

The 1935 Constitution's provision for the Supreme Court's certiorari jurisdiction followed the great reform in United States Supreme Court's appellate jurisdiction in 1925. The Judges' Bill, so-called because it was the work of the Justices, in conception and language delineated two different avenues of review in the Supreme Court: review as a matter of appellant's right by way of appeal and review by way of certiorari, which was discretionary with the Court. With regard to cases brought for review on certiorari, the Rules of the United States Court sets forth the standards by which the Court's discretion could be exercised, to wit:

> 1. A review on the writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered:
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> > (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court; and
> >
> > (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with the applicable state or territorial law; or has decided an important question of federal law which has not been, but should be settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.
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> 2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

In 1988, the American Congress went even further. With the support of all the Justices, who were alarmed by the mounting caseload of the Supreme Court, it

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[6] Act No. 190, § 496; Act of July 1, 1902 (Philippine Bill), § 10; Philippine Autonomy Act (Jones Law), § 27.

made the Court's appellate jurisdiction over state courts' decisions almost entirely discretionary.[7]

UNCERTAINTY IN THE ADOPTION OF CERTIORARI JURISDICTION

In the Philippines, the 1935 Constitution's provision on certiorari as a mode of appeal was followed by the inclusion of a provision similar to Rule 10 of the United States Rules of Court. Thus, Rule 46, § 4 of our 1940 Rules of Court provided:

> A review is not a matter of right but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered
>
> > (a) When the Court of Appeals has decided a question of substance not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or
> >
> > (b) When the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

However, while declaring in Rule 46, § 1 that, "[a] party may appeal by certiorari from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for certiorari," the 1940 Rules also provided in Rule 56, § 1 that, "unless otherwise provided by the Constitution or by law, the procedure in the Supreme Court in original as well as appealed cases shall be the same as in the Court of Appeals." Since Court of Appeals review of the Courts of First Instance judgments was by way of ordinary appeal, this meant that Supreme Court review of Court of Appeals decisions was likewise by ordinary appeal. Review of the Courts of First Instance decisions in those instances allowed by law was also by ordinary appeal.[8]

Thus, while stating in one part that review of Court of Appeals decisions should be by certiorari, the 1940 Rules provided in the next breath that such review should be by ordinary appeal. Because of the apparent conflict in the Rules provisions, practitioners played it safe by taking the avenue of ordinary appeal. Moreover, to bring an ordinary appeal they had a longer period of thirty days; if they filed a petition for review on certiorari, they would have only fifteen days to do so.

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[7] GERALD GUNTHER, CONSTITUTIONAL LAW 52-53 (12th ed. 1991), *citing* 102 Stat. 662, 28 U.S.C. § 1257.

[8] RULES OF COURT (1940), Rule 41, § 3; Rule 42, § 1

When the Rules of Court were revised in 1964, nothing was done to remove the conflict.[9] Meanwhile, in 1968, Congress made a number of cases, which theretofore were directly appealable to the Supreme Court by ordinary appeal, appealable only by certiorari, even as it rerouted other cases to the Court of Appeals. This was the reform made by Republic Act No. 5440,[10] which amended Section 17 of the Judiciary Act of 1948.[11] Nonetheless, the purpose of certiorari jurisdiction was not fully realized as cases involving constitutional or jurisdictional questions and those involving questions of law were directly brought to the Supreme Court via special civil actions of certiorari, prohibition, and mandamus.

The uncertainty finally ended with the promulgation of the Rules of Civil Procedure in 1997. Rule 56, § 3 now provides, "An appeal to the Supreme Court may be taken *only* by a petition for review on certiorari, except in criminal cases where the penalty imposed is death or *reclusion perpetua* or life imprisonment."[12] Appeal by writ of error or ordinary appeal was abolished, as the court's appellate jurisdiction was made almost entirely discretionary. Today, the only cases in which appeal is obligatory are criminal cases in which the penalty imposed is death or *reclusion perpetua* or life imprisonment[13] and special proceedings.[14]

AMERICAN AND PHILIPPINE CERTIORARI PRACTICES COMPARED

Although the certiorari jurisdiction of the Supreme Court has its origin in American law, particularly in the Judges' Bill of 1925, the two diverge in important ways in practice.

As already noted, certiorari jurisdiction was adopted in the United States principally to stem the flood of appeals from state court decisions. The writ of certiorari is used as a screening device to reduce the number of cases which the Court will accept for decision. For this purpose law clerks are utilized to prepare memos for use of the Justices at conference. The memos contain a summary of the issues and the facts and the opinions below. In some cases, law clerks are placed in a pool to prepare what has come to be called "cert. pool memos" in order to minimize duplication of work and maximize their time. The law clerks in the pool divide the cases. Their memos are circulated to the chambers represented in the pool. The law clerks of each Justice then make a recommendation whether to grant or not to grant petitions. The petitions are voted upon by the Justices at their conferences on Fridays.

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[9] RULES OF COURT (1968), Rule 45, § 1; Rule 56, § 1; Rule 42, § 1

[10] An Act Amending Sections Nine and Seventeen of the Judiciary Act of 1948.

[11] Rep. Act No. 296

[12] Emphasis added.

[13] RULES OF COURT, Rule 125, § 2.

[14] *Id.* Rule 109.

Historically, the granting of certiorari has required the votes of only four of the nine Justices. This is called the "rule of four." Petitions which are granted are placed in the "discuss list". Not more than 10% of the petitions filed annually in the U.S. Supreme Court make it to this list. In fact, Chief Justice Rehnquist estimates that of the average 4,000 petitions filed each year, only about 150 are granted. These are the cases that are heard and decided. The rest are denied and placed in the "dead list."[15]

In the Supreme Court of the Philippines the writ of certiorari is not used to control the cases which the Court will hear and decided by full opinion. Rather, it is employed to narrow the scope of review, by limiting it to questions of law in contrast with ordinary appeals in which questions of fact and law dealt with in the assignment of errors are considered. Findings of facts of lower courts are generally considered conclusive on the Court.[16] However, the Court has often examined the evidence on allegations that:

(1) the conclusion of the Court of Appeals is grounded entirely on speculations, surmise or conjecture;

(2) the inference made by it is manifestly absurd, mistaken or impossible

(3) there is grave abuse of discretion in the appreciation of facts;

(4) the judgment of the Court of Appeals is premised on a misapprehension of the facts;

(5) its findings of facts are conflicting; and

(6) the Court of Appeals in making its findings went beyond the issues and the same are contrary to the admissions of both the appellant and the appellee.[17]

The very purpose of certiorari, however, is to confine Supreme Court review to questions of law. Petitions raising questions of fact and alleging, for example, that the Court of Appeals decision is based on a misapprehension of the facts or that it is based entirely on speculation, surmise, or conjecture should be denied. The Court's function is not to correct mere errors. That is the function of the Court of Appeals, which was created precisely to relieve the Supreme Court of much of the work that it used to do.

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[15] WILLIAM REHNQUIST, THE SUPREME COURT 253-54, 263-64, 266, 268-69 (1987); W.H. PERRY, JR., DECISION TO DECIDE 41-44 (1991).

[16] *See, e.g.*, Aguirre v. People, G.R. No. 56013, 155 SCRA 337, 341, Oct. 3, 1987; Bustamante v. Court of Appeals, G.R. No. 89880, 193 SCRA 603, 608, Feb 6, 1991

[17] Remalante v. Tibe, G.R. No. 59514, 158 SCRA 138, 145, Feb 25, 1988.

Indeed, another layer of appeal is unnecessary as the petitioner has already received at least one appellate review and should not be entitled to another one. As Chief Justice Vinson pointed out in a widely cited speech before the American Bar Association in 1949, if the Supreme Court takes every case in which an interesting legal question is raised or its prima facie impression is that the decision below is erroneous, it would not be able to fulfill its Constitutional and statutory responsibilities.[18]

There should be strict observance of the standards set forth in Rule 45, § 6 in deciding whether or not to grant certiorari. Review by certiorari, it cannot be over emphasized, should not be a matter of right but only of sound judicial discretion and should be granted only when there are special and important reasons to do so, such as: (1) when the court a quo has so far decided a question of substance not already determined by the Supreme Court, or has decided it in a way not probably in accord with the law or with applicable decisions of the Supreme court; or (2) when the court a quo has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such departure by a lower court as to call for an exercise of the power of supervision.

Needless to say, strict adherence to the provisions of Rule 45, § 6 calls for a corresponding measure of care in the decision of cases by the lower courts. The attitude not to do one's best because any error committed will any way be corrected by the Supreme Court is the great enemy of an efficient appeal system. Great care should be taken in the evaluation of the evidence and sedulous adherence to precedents or the rule of *stare decisis* should be observed. In particular the Court of Appeals, as the intermediate appellate court, should be ready to assume this great task.

To summarize, review on certiorari should be used not only to limit the scope of review to questions of law and to instances where, in the words of Rule 45, § 6, "there are special and important reasons therefor," but also to choose which cases the Court will hear and decide. This will enable it to focus on its essential mission as the highest court of the land. In a well ordered and functioning appellate system as Justice Louis Brandeis put the matter succinctly: "The most important thing we do is not doing."[19] He was speaking of the screening function of certiorari jurisdiction.

Indeed, full implementation of the certiorari jurisdiction is a matter which deserves serious study and consideration. The adoption of a certiorari jurisdiction for the Supreme Court is in line with Art. VIII, § 5 of the Constitution. Pursuant to its Constitutional authority, Congress, by Republic Act No. 5440, adopted a certiorari policy for the Court in 1968. This Court, likewise in the exercise of its power under the Constitution, has prescribed certiorari as the sole mode for

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[18] PERRY, *supra* note 15, at 36.

[19] Bush v. Gore, 531 U.S. 98, 157 (2000) (Breyer, J., *dissenting*).

invoking its appellate jurisdiction. It is full implementation of the certiorari policy that is lacking.

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