

MENDIOLA v. QUITUGUA

THOMAS C. MENDIOLA, Appellant

v.

DAVID R. QUITUGUA, Appellee

Civil Appeal No. 62

Appellate Division of the High Court

May 10, 1971

See, also, 5 T.T.R. 350

Motion to set aside dismissal of appeal. The Appellate Division of the High Court held that as an appeal can be perfected without payment of cost of transcript, appellant's ground for motion that failure to perfect appeal resulted from his inability to pay such costs failed to set forth adequate facts or law warranting reconsideration of the dismissal.

Civil Procedure—Costs—Transcript on Appeal

An appeal can be perfected without payment of cost of transcript in accordance with Rule 32f(1), Rules of Criminal Procedure, also applicable to Civil Procedure, and 6 T.T.C. § 406.

TURNER and BROWN, *Associate Justices*

The above-captioned matter having been dismissed for failure of the appellant to perfect the appeal [5 T.T.R. 350], the Trial Assistant, a Public Defender's Representative who is counsel for appellant, filed motion to "set aside" the dismissal. Ground for the motion is that the appel-

lant, having been ill and unemployed, was unable to pay the \$45.00 estimated cost of transcript.

The reason given is without merit. The Public Defender's Office, through the Assistant Public Defender assigned to the Palau District, has obtained relief from the obligation to pay cost of transcript by appropriate motion in at least three cases. These cases were appealed to the Appellate Division and the file was lodged with the Clerk of that Division in Saipan where they were available to inspection by a representative of the Public Defender's Office. These cases contain memorandum opinions in explanation of the order granting appellant copies of the trial transcript without payment of the cost. Appellant's counsel, by making the most cursory inquiry, could have learned the appeal here could be perfected without payment of cost of transcript in accordance with Rule 32f(1), Rules of Criminal Procedure, also applicable to Civil Procedure, and 6 T.T.C., Section 406, both of which relate to "due process" under 1 T.T.C., Section 4.

The motion to set aside fails to set forth adequate facts or law warranting reconsideration of the dismissal. It is, therefore,

Ordered that appellant's motion to set aside the order dismissing the appeal for failure to perfect appeal be and the same hereby is denied.