6 Phil. 273

[G.R. No. 3080. May 06, 1906]

NARCISO CABANTAG, PETITIONER, VS. GEORGE N. WOLFE, RESPONDENT.

D E C I S I O N

TRACEY, J.:

In August, 1901, Narciso Cabantag, a civilian, was tried and convicted of murder before a military commission. His conviction was duly confirmed December 10,1901, and his execution by hanging directed to take place on January 12, 1902. He escaped December 26, 1901, and surrendered himself on July 18, 1902. Thereafter, acting on petition of the accused for pardon presented to the President of the United States, the Civil Governor, on December 2, 1903, commuted his sentence to twenty years' imprisonment, which was approved by the Secretary of War by direction of the President on January 23, 1904. The petitioner, who has since been confined under this commuted sentence, seeks his release by *habeas corpus.*

General Orders, No. 8, August 22, 1898, while recognizing for certain purposes the local civil courts, created not only provost courts for the trial of minor offenses but also military commissions with jurisdiction over "murder, manslaughter, * * * and such other crimes, offenses, or violations of the laws of war as may be referred to it for trial by the commanding general," and authorized punishments therefor to.conform to those in use under the laws of the United States, or of the States.

General Orders, No. 58, April 23, 1900, regulating the criminal procedure of the Islands, provided that existing laws on the same subject should remain valid except as therein modified or repealed. By virtue of section 109 civil and military tribunals "each within its proper limits" were to have exclusive jurisdiction of crimes. Any doubt as to the effect of this section is put at rest by other orders—for instance, No. 64, of 1900, which enacted that department commanders might cause offenses to be tried before military commissions or

provost courts.

Such tribunals organized in a conquered country have their jurisdiction prescribed by the military authority constituting them, which possesses plenary legislative power to establish courts, to define crimes and to prescribe the corresponding punishments. In so far as is disclosed by this record, the petitioner was therefore properly tried and sentenced.

Although, under the Spooner amendment of March 2, 1901, the Government of the Philippine Islands was vested in such persons as the President might designate (Dorr *vs*. U. S., 195 U. S., 138), and thereafter became one of Congressional authority rather than of the military power, yet military commissions do not appear to have ceased to exist until the proclamation of the President of July 4, 1902. With them ceased the crime of "murder" under its,special definition by American law, together with any penalty therefor other than that provided in our civil statutes. Upon the surrender of the petitioner it became a grave question whether any court existed competent to carry out upon him the sentence of the defunct commission. It would have been proper for Congress to provide for a transfer of the jurisdiction of existing military tribunals and the causes pending therein to the civil courts succeeding them, and also to delegate the provision of such transfer to the local legislature. (Leitensdorfer *vs*. Webb, 20 How., 176.) In fact, nonmilitary matters pending in provost courts were so transferred, civil actions (June 11, 1901) by Act No. 136 of the Commission, section 78, and certain criminal causes by Act No. 186 (August 9, 1901), but no enactment appears to have been passed relating to military commissions until September 3, 1903, when Act No. 865 authorized courts of First Instance to carry out unexecuted sentences of both classes of military courts.

We entertain no doubt that the principle of Leitensdorfer *vs*. Webb extends to criminal as well as to civil jurisdiction, nor do we think that the power of the legislature in relation to cases before military commissions was lost because not promptly exercised. Had the petitioner brought his *habeas corpus* proceedings before the passage of Act No. 865, he would have presented a different question, which we are not now called upon to consider.

The prisoner thus being properly held under a judgment capable of enforcement, was it competent for the executive, on his petition for pardon, to commute his sentence and direct his further detention for a term of twenty years?

The executive power to grant pardons in the Philippine Islands was delegated to the Civil Governor under general instructions of the President of the United States, transmitted by

the Secretary of War, his action in all cases to be submitted to the President.

It does not appear to be necessary to pass upon the question whether the pardoning power is one that the President may exercise through his subordinate officials, for the reason that, in this instance, in compliance with his general instructions, the proposed commutation was reported to him, and by his direction was formally approved by the Secretary of War. This is tantamount to direct action by the President, his mind acted upon the particular application, and only the administrative acts required to carry out his judgment were committed to subordinates.

In the exercise of the pardoning power the executive may not only annex a condition to a pardon but may commute the punishment. Such appears to have been the opinion of the majority of the Supreme Court in *Ex parte* Wells (18 How., 307) arid is also of high authority among the courts of the several States. (McDowell *vs*. Couch, 6 La. Annual, 365; Perkins *vs*. Stevens, 24 Pick, 277.) Such also has long been the established executive practice. The authorities cited show that in the prevailing doctrine in American law/commutation is regarded rather as a reduction of penalty than as the substitution of a different punishment, even in the case of a change, as in this instance, from death to imprisonment. A sentence to death for murder may be reduced to the penalty of any lesser degree of manslaughter.

By the instructions of the Secretary of War, the Civil Governor was empowered to commute sentences of military commissions in cases only in which "the record does not disclose affirmatively that the offense on which the conviction was secured was an offense against the laws of war." (Letter of January 3, 1903.) It is contended that inasmuch as murder, as contra-distinguished from *mesinato*, was a crime, and hanging in the year 1901 was a punishment unknown to the civil law of these Islands, and existing therein only by virtue of military orders, it is apparent from the record that the offense for which the petitioner was punished was necessarily one against the laws of war only, and did not fall within the powers delegated to the Civil Governor. If this is so, the imprisonment of the petitioner by virtue of the order of the Governor is claimed to be illegal.

It is true that military commissions exist only by virtue of the laws of war, but the theory of their being is that they are the medium appointed by the military power temporarily in occupation of a, country for the administration of its civil and criminal law. They may be directed to proceed either according to its preexisting forms or to any modification of them deemed convenient. They may co-exist with the civil courts and exercise a concurrent jurisdiction. In either tribunal the authorization and sanction of its action comes from the

military power, but it has never been urged that sentences of the civil courts in such circumstances were for offenses against the laws of war. In trying prisoners for nonmilitary offenses, both military and civil courts are administering the civil as distinguished from the military law, and it matters not that their common legislature has provided a different classification of crime or a different penalty in the two classes of courts. The true distinction is between acts offending against laws of a civil nature, no matter by whom enacted, and those violating enactments of a purely military character. The act of the petitioner, a civilian, in killing another civilian from motives and in circumstances wholly disconnected with military matters or discipline was a crime against the civil law of the State and not an offense against the laws of war.

In the Wells case it was said that a conditional pardon has no force until accepted by the condemned. The reason is obvious. The condition may be less acceptable to him than the original punishment, and may in fact be more onerous. He has a right to choose whether to accept or to reject it on the terms tendered. In this respect it differs from a commutation, which is a mere reduction of the penalty, or from a pardon which is its total remission. It is not altogether apparent that in the exercise of his constitutional power to remit or decrease sentences by granting pardons, committed to him by the Constitution, the President of the United States is not free to act without the concurrence of the condemned. If, however, that be the rule established by the reasoning of Chief Justice Marshall in United States *vs*. Wilson (7 Peters, 150), then we think that the acceptance on the part of this prisoner was manifested, and his right to reject an unconditional pardon, either total or partial, was waived when he sent in his petition for pardon. In fact, through different channels he sent in three applications, none of which are contained in the record. Assuming that they were in the customary form of petitions for pardon, they must be taken to have been presented with knowledge of the executive usage of a partial as well as of a total grant, and therefore to have contemplated a possible commutation of punishment. One, at least, of these petitions was brought to the attention of the President and upon it was based his action, which the petitioner may not now reject. If, as has been held in some of the States, it is necessary to apply to this executive act the elements of the law of contracts, then we may say that in the petition and its partial but unconditional allowance, the two minds—that of the criminal and that of the Chief Magistrate of the United States—sufficiently met, and the pardon, on any theory, was valid.

Were we disposed to hold the exercise of the pardoning power in this case for any reason invalid, it is not perceived that the result would benefit the petitioner. He would then stand unpardoned under his original conviction by the military commission, which the Courts of

First Instance are, by Act No. 865, empowered to order carried out. There appears to be no reason to doubt the efficacy of this act. It is sustained on the principles discussed in the Leitensdorfer case, which arose out of the Mexican conquest, and again laid down after the civil war in The Grapeshot (9 Wallace, 132) and Mechanics Bank *vs*. Union Bank (22 Wallace, 276.).

The prisoner should be remanded to the custody of the sheriff. So ordered.

Arellano, C. J., Torres, Mapa, and *Willard, JJ.,* concur.

Carson, J., concurs in the result.

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