

6 Phil. 324

[G.R. No. 2280. July 18, 1906]

FELIX MELLIZA (ALIAS PINGA), PETITIONER, VS. W. H. MITCHELL, DEPUTY SHERIFF OF THE CITY OF MANILA, RESPONDENT.

D E C I S I O N

WILLARD, J.:

In the case of the United States vs. Miguel A. Soler and Felix Melliza,^[1] the petitioner in this case, defendants appealed from the judgment rendered therein. At the time of the rendition of the judgment, the petitioner Melliza was at liberty under bail, and on the 5th of November, 1904, his sureties, in accordance with the provisions of section 75 of General Orders, No. 58, surrendered him to the deputy sheriff of the city of Manila, the respondent in this case. Melliza thereupon applied to Justice Johnson, of this court, for a writ of *habeas corpus*. The writ was issued on, the 14th day of November, 1904, and hearing was had thereon and on the same day an order was made by Justice Johnson releasing the petitioner on the ground that the judgment aforesaid was void.

The Solicitor-General, on the 15th of November, appealed from this order to this, court. Upon said appeal being presented, Justice Johnson ordered the petitioner committed unless he gave bail in the sum of eight thousand pesos. Such bail was given and the petitioner is, now at liberty by reason thereof. The appeal has been argued and submitted and is now before the court for decision.

In the decision of this court just rendered in the case of the United States vs. Soler, we held that the judgment therein was void. In that case, which was an appeal by the petitioner from the judgment, we ordered the case remanded for a new trial. The petitioner should not be, therefore, set at liberty absolutely, but should be delivered by the respondent to the sheriff of the Province of Sorsogon for the purposes of the new trial ordered as aforesaid.

The order appealed from is modified by directing that the petitioner be remanded to the

custody of the sheriff of the Province of Sorsogon, In other respects it is affirmed. So ordered.

Arellano, C.J., Torres, Mapa, and Tracey, JJ., concur.

Carson, J., disqualified.

^[1] Page 321, *supra*.

Date created: April 30, 2014