43 Phil. 293

[. April 07, 1922]

IN RE MARCELINO LONTOK.

D E C I S I O N

MALCOLM, J.:

The Attorney-General asks that an order issue for the removal of Marcelino Lontok from his office of lawyer in the Philippine Islands, because of having been convicted of the crime of bigamy. The respondent lawyer, in answer, prays that the charges be dismissed, and bases his plea principally on a pardon issued to him by former Governor-General Harrison.

Marcelino Lontok was convicted by the Court of First Instance of Zambales of the crime of bigamy. This judgment was affirmed on appeal to the Supreme Court, while a further attempt to get the case before the United States Supreme Court was unsuccessful. On February 9, 1921, a pardon was issued by the Governor-General of the following tenor:

> "By virtue of the authority conferred upon me by the Philippine Organic Act of August 29, 1916, the sentence in the case of *Marcelino Lontok*, convicted by the Court of First Instance of Zambales of bigamy and sentenced on February 27, 1918, to imprisonment for eight years, to suffer the accessory penalties prescribed by law, and to pay the costs of the proceedings, which sentence was, on September 8, 1919, confirmed by the Supreme Court, is hereby remitted, on condition that he shall not again be guilty of any misconduct."

The particular provision of the Code of Civil Procedure, upon which the Attorney-General relies in asking for the disbarment of Attorney Lontok, provides that a member of the bar may be removed or suspended from his office of lawyer by the Supreme Court "by reason of his conviction of a crime involving moral turpitude." (Sec. 21.) That conviction of the crime of bigamy involves moral turpitude, within the meaning of the law, cannot be doubted. The

debatable question relates to the effect of the pardon by the Governor-General. On the one hand, it is contended by the Government that while the pardon removes the legal infamy of the crime, it cannot wash out the moral stain; on the other hand, it is contended by the respondent that the pardon reaches the offense for which, he was convicted and blots it out so that he may not be looked upon as guilty of it.

The cases are not altogether clear as to just what effect a pardon has on the right of a court to disbar an attorney for conviction of a felony. On close examination, however, it will be found that the apparent conflict in the decisions is more apparent than real and arises from differences in the nature of the charges on which the proceedings to disbar are based. Where proceedings to strike an attorney's name from the rolls are founded on, and depend alone, on a statute making the fact of a conviction for a felony ground for disbarment, it has been held that a pardon operates to wipe out the conviction and is a bar to any proceeding for the disbarment of the attorney after the pardon has been granted, (*In re* Emmons [1915], 29 Cal. App., 121; Scott vs. State [1894], 6 Tex. Civ. App., 343.) But where proceedings to disbar an attorney are founded on the professional misconduct involved in a transaction which has culminated in a conviction of felony, it has been held that while the effect of the pardon is to relieve him of the penal consequences of his act, it does not operate as a bar to the disbarment proceeding, inasmuch as the criminal acts may nevertheless constitute proof that the attorney does not possess a good moral character and is not a fit or proper person to retain his license to practice law. (People vs. Burton [1907], 39 Colo., 164; People vs. George [1900], 186 111., 122; Nelson vs. Com. [1908], 128 Ky., 779; Case of In re———[1881], 86 N. Y., 563.)

The celebrated case of *Ex parte* Garland [1866], 4 Wall., 380, is directly in point. The petitioner in this case applied for & license to practice law in the United States courts, without first taking an oath to the effect that he had never voluntarily given aid to any government hostile to the United States, as required by statute. The petitioner, it seems, had been a member of the Confederate Congress, during the secession of the South, but had been pardoned by the President of the United States. It was held, by a divided court, that to exclude the petitioner from the practice of law for the offense named would be to enforce a punishment for the offense, notwithstanding the pardon, which the court had no right to do; and the petition was granted. Mr. Justice Field, delivering the opinion of the court, in part, said:

> "A pardon reaches both the punishment prescribed for the offense and the guilt

> of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innqcent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, if removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new flian, and gives him a new credit and capacity.
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> "There is only this limitation to its operation; it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment."

Although much which is contained in the opinion of the four dissenting justices, in the Garland case, appeals powerfully to the minds of the court, we feel ourselves under obligation to follow the rule laid down by the majority decision of the higher court. We do this with the more grace when we recall that according to article 130 of the Penal Code, one of the different ways by which criminal liability is extinguished is by pardon. We must also remember that the motion for disbarment is based solely on the judgment of conviction for a crime of which the respondent has been pardoned, and that the language of the pardon is not such as to amount to a conditional pardon similar in nature to a parole. It may be mentioned, however, in this connection, that if Marcelino Lontok should again be guilty of any misconduct, the condition of his pardon would be violated, and he would then become subject to disbarment.

It results, therefore, that the petition of the Attorney-General cannot be granted, and that the proceedings must be dismissed. Costs shall be taxed as provided by section 24 of the Code of Civil Procedure. So ordered.

Araullo, C. J., Villamor, Ostrand, Johns, and *Romualdez, JJ.,* concur.

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