

CARLOS TOLEDANO, PETITIONER AND APPELLANT, VS. FELIX SEVERINO, RESPONDENT AND APPELLEE.

G.R. No. L-1255. July 30, 1947

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal from the decision of the Court of First Instance of Occidental Negros which denied the appellant's petition for habeas corpus.

The appellant appealed from the order denying his petition, and now submits to this Court the following assignment of errors:

"1. The trial court erred in not finding that it lacks jurisdiction over the person of the petitioner, and over the crime he has committed.

"2. The trial court erred in sentencing him to serve the unexpired portion of a sentence for a crime committed prior to the Japanese Invasion.

"3. The trial court erred in not giving him his liberty."

(I) The first and third assignments of error do not deserve a serious consideration.

Appellant's contention that the court a quo had no jurisdiction over the person of the appellant is untenable, for it is plain that the appellant, having filed a petition for habeas corpus with the court, the latter had acquired jurisdiction of the person of the appellant.

And as to the alleged lack of jurisdiction of the lower court over the crime committed by the appellant, suffice it to say that said appellant was not tried and convicted by the said court. In this habeas corpus proceeding the lower court denied only the release of the appellant, because there was no showing that the trial court which convicted him had no jurisdiction over the crime and the person of the appellant, and to impose the penalty imposed upon him.

(II) The second assignment of error is not meritorious also, for the lower court did not sentence the appellant to serve the unexpired portion of the sentence he was serving for a crime committed prior to the Japanese invasion. What the lower court did was only to deny the petition for habeas corpus, for the reason that the appellant was being legally detained since he was serving the unexpired portion of his sentence. The lower court did not try the appellant for evasion or violation of sentence under article 171 of the Revised Penal Code, which requires a new prosecution, previous trial and the imposition of another penalty if convicted of said offense.

In view of the foregoing, the order appealed is affirmed with costs against the appellant.

Moran, C.J., Paras, Pablo, Perfecto, Hilado, Bengzon, Hontiveros, Padilla, and Tuason, JJ., concur.

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