

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RAYMUNDO ZAPANTA AND ANTONINA LAMPANO, DEFENDANTS AND APPELLANTS.

G.R. No. 8914. February 15, 1916

Ponente: CARSON, J.

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CARSON, J.:

Upon motion of the appellants, this case was set down for a rehearing which was limited to a consideration of the question as to whether there is any competent evidence in the record as to the conditions of the alleged conditional pardon, for the alleged breach of which the appellants were committed to Bilibid Prison by the court below for the unexpired portion of the original sentence pronounced upon them.

It is urged, and we think with reason, that the order appealed from should be reversed, if it appears from a review of the whole record that the only evidence offered in the court below which purports to set forth the terms and conditions of the alleged pardon was incompetent and inadmissible, and that its admission into the record was duly objected to by counsel for the appellants.

The proceedings were had under the provisions of Act No. 1524, which empowers the proper Court of First Instance to order the recommitment and confinement of any person conditionally pardoned, if the court finds that one or more of the conditions of a conditional pardon have been violated by the person so pardoned. Manifestly no order of recommitment and confinement under Act No. 1524 should be sustained, in the absence of evidence in the record as to the terms and conditions of the alleged pardon, since no finding of a breach of the conditions of a pardon can properly be made without proof as to the nature and character of the terms and the conditions of the pardon which it is alleged have been violated.

After a thorough review of the whole record, we find not a scintilla of evidence as to the issuance of the alleged conditional pardon, or as to the conditions upon which it was granted, other than a typewritten document, which was offered in evidence by the prosecution as a copy of an original pardon supposed to have been executed by the Governor-General of the Philippine Islands. This document was admitted in evidence over the vigorous objection of counsel for the defendants, who insisted that it was not competent evidence of the issuance of the alleged pardon, or of the terms and conditions of the original instrument of which it purported to be a copy.

We are of opinion not only that this document was erroneously admitted into the record over the objection of counsel, but that it is wholly incompetent evidence as to the issuance of the original pardon of which it purports to be a copy, or as to the conditions of the original pardon which the trial court found had been violated by these appellants. Purporting merely to be a copy of an original act by the Chief Executive it bears no certificate as to its authenticity.

Sections 299, 313, and 318 of the Code of Civil Procedure are in part as follows:

"SEC. 299. * * * copy of a public writing, duly certified to be a true copy thereof, is admissible evidence in

like cases and in like effect as the original writing."

"SEC. 313. Official documents may be proved, as follows: 1. Acts of the Chief Executive of the Philippine Islands, by the record of his office, certified by his secretary under the seal thereof, if there be one; * * *."

"SEC. 318. What certificate of copy of writing must state.—Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court." (Cal. 1923; 7 Phil. Rep., 250.)[1]

We need not stop to examine the reasons which induced the lawmaker to require the certification of copies of writings before permitting them to be used in evidence, and to prescribe in detail the contents and form of the required certificate. The door to fraud and mistake which Would be opened by the admission in evidence of uncertified copies of original writings, sufficiently explains this very salutary rule of evidence; and although we cite the rule as set forth in the Code of Civil Procedure, it cannot be doubted that a no less stringent rule should be enforced with reference to the admission in evidence of copies of writings in criminal cases.

Absolutely the only evidence in the record as to the issuance of the alleged conditional pardon, and as to the conditions thereof which it is alleged were violated by these appellants is a document purporting to be a copy of an original writing executed by the Governor-General of the Philippines, but not certified as a correct copy of the original by the secretary of the Governor-General or by any other person, which was admitted into the record over the objection of counsel for the appellants. We conclude therefore that the order entered in the court below, recommitting these appellants to Bilibid Prison, based as it is on a finding that they had violated the conditions of a pardon, without competent evidence in the record as to what those conditions were, must be reversed.

It may be admitted that there is nothing in the record to indicate that the provincial fiscal had any reason to doubt that the document submitted by him in the court below was a correct copy of an original pardon issued by the Governor-General. Indeed, we are inclined to believe that it is in fact a correct carbon copy of such a pardon. It bears on one corner the unsigned typewritten words: "Copy furnished to the clerk of the court;" and also the impress of the seal of the Executive Secretary, from which we infer that it may have been, and probably was prepared by the Executive Secretary and forwarded to the clerk of the Court of First Instance of Pampanga for his information. But it is lacking in the certificate as to its correctness as a copy of an original pardon issued by the Governor-General, without which it is wholly incompetent and insufficient as proof of the issuance, the contents and the conditions of such a pardon.

The burden of proof of the charge that these appellants had violated the conditions of a pardon granted them rested on the prosecuting officer, and in the absence of proof of that fact the court below could not properly order their confinement in Bilibid, nor can this court lawfully affirm such an order when its attention has been directed to the lack of such proof in the record.

When this case was originally submitted on appeal, we were fully satisfied, from an examination of the evidence of record, as to the guilt of the appellants of the specific acts of misconduct with which they were charged in the court below, and our attention was more especially directed to the consideration of some extremely nice questions as to the jurisdiction of the court to entertain and decide the appeal. In the discussion of the broad issues thus submitted for adjudication we overlooked the apparently technical, but, as it develops on closer examination, the very substantial contention of counsel as to the lack of competent evidence touching the issuance of the alleged conditional pardon, and the conditions upon which it is alleged it was granted. This cannot be attributed to any failure on the part of counsel to raise the issue in his brief, or to the neglect of the ponente to invite the attention of

the court to the contention of counsel in this regard, but rather to the fact that the point was lost sight of in the discussion of other apparently more important issues involved in the case. However this may be, a majority of the court united in an opinion directing the entry of a judgment affirming the order entered in the court below, and it was not until our attention was again directed to the omission of competent evidence from the record which is discussed in this opinion, that we became convinced of the substantial nature of the alleged error in the proceedings had in the court below.

The motion for a rehearing having been submitted and granted within the time prescribed by rule, and we having become convinced that the order appealed from, was erroneously entered in the court below, it becomes our duty to revoke the judgment heretofore entered by our direction affirming the order entered in the court below, and at the same time to direct that ten days hereafter judgment be entered reversing the order entered in the court below, and directing the dismissal of these proceedings against the appellants and the exoneration of their bail bonds, with the costs of both instances de officio. So ordered.

Arellano, C. J., Torres, and Trent, JJ., concur.
Moreland, J., see concurring opinion.

[1] U. S. vs. Orowt, 7 Phil. Rep., 247.

CONCURRING OPINION

MORELAND, J.:

As the question of right of appeal has already been settled by this court and therefore eliminated from the controversy at bar, I concur in the foregoing decision.

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