

CO PIAO (ALIAS CHO CHI LIP), PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-1277. February 07, 1947

Ponente: BENGZON, J.

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BENGZON, J.:

The respondent Director of Prisons, through the Solicitor General, endorses the prayer for release in this habeas corpus proceeding. He states that the petitioner is under confinement because:

"1. On July 27, 1943, the petitioner was convicted of the crime of robbery in an uninhabited house by the Court of First Instance of Manila in criminal case No. 2302 and sentenced to a principal penalty of 1 year and day of prision correccional and an additional penalty of 2 years, 4 months and 1 day of prision correccional for being habitual delinquent (Annex A);

"2. This sentence commenced to run and the petitioner started serving same on July 27, 1943 and was to have expired without good conduct time allowance on November 28, 1946, and with good conduct time allowance on May 12, 1946 (Annex B);

"3. On February 5, 1945, the petitioner was granted a conditional pardon by the then Director of Prisons upon order of the Japanese Army Detachment Commander and was released on February 9, 1945 (Annex B);

"4. On July 19, 1945, the petitioner was convicted of a violation of article 190 of the Revised Penal Code by the Court of First Instance of Manila in criminal case No. 71005 and sentenced to 2 months and 1 day of arresto mayor (paragraph 3, Petition);

"5. On May 7, 1946, the petitioner was prosecuted for and convicted of violation of conditional pardon by the Court of First Instance of Manila in criminal case No. 74317 and sentenced to suffer a penalty of 8 months and 1 day of prision correccional (Annex C);

"6. The petitioner has since July 9, 1945 and up to now been under detention and confinement at the New Bilibid Prison in Muntinglupa, Rizal (Annex D)."

Believing that under our applicable decisions the conditional pardon of February 5, 1945, was void, and that the conviction of petitioner in criminal case No. 74317 was also void, respondent submits the following computation on which his recommendation for petitioner's liberation is founded:

"Under criminal case No. 2302, the petitioner served sentence from July 27, 1943 to February 9, 1945—a period of 1 year, 6 months and 12 days. At the time of his release, the petitioner still had to serve 1 year, 9 months and 20 days. Deducting good conduct time allowance of 92 days for the served period, there still remained 1 year, 6 months and 18 days. When the petitioner was sentenced to a penalty of 2 months and 1 day in criminal case No. 71005, he, therefore, had to serve a total imprisonment of 1 year, 8 months and 19 days. Inasmuch as the petitioner was recommitted to jail on July 9, 1945 (see Annex D), his imprisonment is to expire on March 28, 1947. If he is granted again good conduct time allowance from July 9, 1945 to the present date—a period of 1 year, 6 months and 20 days—he is entitled to 93 days. With this time allowance his service would have expired

on December 25, 1946."

It appears that in criminal case No. 74317 Co Piao alias Cho Chi Lip, pleaded guilty to an information charging him with violation of article 159 of the Revised Penal Code. Desiring to ascertain the exact nature of the pardon he had violated, we got the original record from the ManiJa Court of First Instance, and found therein that, according to the information, the accused had been granted pardon "on February 5, 1945, by the then Commander-in-Chief of the Japanese Army of occupation of the Philippines", and that "he was at that time serving sentence in the New Bilibid Prison in Muntinlupa, Rizal". Applying our opinion in the case of Sameth (76 Phil., 613), wherein pardon had been granted a prisoner in Muntinlupa by the Japanese authorities on February 5, 1945, when the power of the enemy forces of occupation had ipso facto ceased, the pardon to Co Piao must be declared to be absolutely null and void and of no legal force and effect. It follows, as a consequence, that his conviction for violation of that void pardon is likewise ineffectual.

Now, accepting the computation made by the respondent, together with the deductions for good conduct time allowance to which, as he evidently admits, the petitioner is entitled, (cf. articles 97 and 99, Revised Penal Code) his conclusion must be shared that petitioner's term of imprisonment under the only two valid sentences against him (criminal cases Nos. 2302 and 71005) expired on December 25, 1946.

Wherefore, the petition for habeas corpus is granted, and an order for petitioner's release will issue forthwith. So ordered.

Moran, C.J., Feria, Pablo, Hilado, Briones, Padilla, and Tuason, JJ., concur.

Paras and Perfecto, JJ., concur in the result.

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