

CARLOS AMAR, PETITIONER, VS. THE HONORABLE SEGUNDO C. MOSCOSO, JUDGE OF THE COURT OF FIRST INSTANCE OF DAVAO, AND THE PROVINCIAL FISCAL FOR THE PROVINCE OF DAVAO, RESPONDENTS.

G.R. No. L-7775. December 19, 1955

Ponente: PADILLA, J.

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PADILLA, J.:

Carlos Amar claims that his conviction and the penalty imposed upon him for evasion of service of sentence in criminal case No. 1999 of the Court of First Instance of Davao was void because when he escaped from prison on 15 December 1952 he was not yet convicted by final judgment for frustrated murder in criminal case No. 4355 of the Court of First Instance of Leyte, the judgment of conviction for such crime having been rendered in February 1951 and appealed to the Court of Appeals; that on 30 October 1951 while his appeal was pending he was transferred to the Davao Penal Colony from where he escaped on 15 December 1952 but was captured six days later; and that the Court of First Instance of Davao committed grave abuse of discretion and exceeded its jurisdiction in convicting him for evasion of service of sentence in criminal case No. 1999 referred to, he not having been convicted by final judgment in criminal case No. 4355 also referred to, as provided for in art. 157 of the Revised Penal Code. For that reason he prays that a writ of certiorari issue commanding the respondent court to forward the record of criminal case. No. 1999 for review and after hearing to declare void and annul the judgment rendered therein.

The Solicitor General in behalf of the respondents denies that the defendant, now petitioner, was found guilty of frustrated murder in criminal case No. 4355 of the Court of First Instance of Leyte, the truth being that he was charged with frustrated murder and found guilty of frustrated homicide and, such verdict and sentence became final on 9 March 1954 when the Court of Appeals upon motion of the appellant, now petitioner, dismissed the appeal. He avers that the Court of First Instance of Davao convicted the defendant, now petitioner, in criminal case No. 1999, of evasion of service of sentence and imposed upon him the penalty of 2 years, 4 months and 1 day of prison correccional, the accessories of the law, and to pay the costs, not knowing that the defendant, now petitioner, was a detention prisoner and not a convict when he escaped from prison, because upon arraignment he entered a plea of guilty to the crime of evasion of service of sentence charged against him in the information, and the Court was not aware of the fact that at the time of his escape he was just a detention prisoner; and that not having been apprised of the fact that the defendant, now petitioner, was a detention prisoner and in view of his plea of guilty, the respondent court properly and lawfully entered the judgment complained of. He contends that the extraordinary remedy of certiorari is not proper and available, because to correct an erroneous judgment rendered by a competent court an appeal is the remedy; that the Court of First Instance of Davao had jurisdiction to try the defendant, now petitioner, for the crime charged in the information; and that the judgment of conviction rendered in criminal case No. 1999 for evasion of service of sentence having become final this Court has no jurisdiction to review, modify, reverse or set it aside. Upon those averments he prays that the petition be

dismissed, with costs.

The reply of the petitioner to the answer of the respondents does not deny the fact that he entered a plea of guilty to the information filed against him for evasion of service of sentence in criminal case No. 1999 of the Court of First Instance of Davao. He, however, claims that he entered the plea without the aid of counsel and not knowing the legal implications and consequences thereof. He further claims that his failure to appeal from the judgment of conviction was lack of sufficient knowledge and information of the step he was to take.

As the reply of the petitioner in effect admits that he entered a plea of guilty to the information filed against him for evasion of service of sentence, this Court is powerless to review by a writ of certiorari the judgment complained of rendered upon that plea, it having been rendered by a competent court and being now final and executory. The petitioner's claim that he did not have the assistance of counsel cannot prevail, over the presumption that the proceedings had been regular and in accordance (with the provisions of the Rules of Court, to wit: that he was afforded the assistance of counsel and that he was informed by the Court that it was his right to have an attorney before arraignment and was asked if he desired the aid of one.[1]

The petition is denied without costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angela, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

[1] Section 3, Rule 112.

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