

**FELICISIMA SANTIAGO, ON BEHALF OF ELPIDIO S. CRUZ,
PETITIONER, VS. THE DIRECTOR OF PRISONS, ET AL.,
RESPONDENTS.**

G.R. No. L-1083. January 30, 1947

Ponente: TUASON, J.

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TUASON, J.:

Felicisima Santiago applies for a writ of habeas corpus directed to the Director of Prisons on behalf of Elpidio S. Cruz, who is at present confined at the Iwahig (Palawan) Penal Colony.

The return of the Solicitor General sets out the salient facts of the prisoner's incarceration. We choose to rely on these facts rather than on those averred in the petition because they are more complete and, being based on official records, carry the presumption of accuracy.

According to the return, Elpidio S. Cruz is under the custody of the respondent Director of Prisons by virtue of the following orders of commitment:

- (a) Recommitment order dated June 3, 1943 of the Commissioner of Justice, appointed during the Japanese occupation, for the unexpired portion of the prisoner's maximum aggregate sentence imposed in cases Nos. 55880, 55365 and 10905 of the Courts of First Instance of Manila and Rizal, in which cases he had been previously granted parole by the Board of Indeterminate Sentence on June 26, 1941. This unexpired portion was five years two months and one day;
- (b) Commitment order in criminal case No. 1216 of the Court of First Instance of Manila for estafa, the sentence in which was four months' imprisonment and an indemnity of P250 with subsidiary imprisonment in case of insolvency;
- (c) Commitment order in criminal case No. 1342 of the Court of First Instance of Manila for estafa, the sentence in which was one year of imprisonment and to indemnify the offended party in the sum of P250, with subsidiary imprisonment in case of insolvency; and
- (d) Commitment order in criminal case No. III-01015 of the Municipal Court of the City of Manila for estafa in which the defendant was sentenced to four months and one day of imprisonment and to pay P125 indemnity, with subsidiary imprisonment in case of insolvency.

The petitioner alleges that the prisoner is detained by virtue of the last-mentioned three convictions for estafa—criminal cases III-01015, 1216 and 1342—and it is the legality of the punishment imposed in one of these cases that she assails. She identifies this¹ case as No. 1216, though in reality, as stated in the respondent's return, it was in case No. 1342 wherein one year imprisonment was meted out. She contends that this sentence was pronounced without the court's jurisdiction and "constitutes a violation of law and should be corrected in an habeas corpus proceeding." Her argument is that in sentencing Cruz to one year and one day of imprisonment (one year) in case No. 1216 (1342) the court regarded his conviction in the other two cases as an aggravating

circumstance, whereas the three cases, according to her, were tried and decided by the same court and for purposes of law should have been considered as only one.

It is apparent that the petitioner was unaware of Cruz's recommitment for violation of the conditions of the parole in the three cases for falsification of official document and violation of article 172 in relation to article 171 of the Revised Penal Code. If there had not been against Cruz other cases than those mentioned in the petition, his terms of imprisonment would have been served long before today regardless of the extent of the punishment complained of. But with the unexpired portion of the three initial sentences added to the sentences imposed in the more recent cases, the prisoner had a total of six years, ten months and two days to extinguish, exclusive of subsidiary imprisonment. And having commenced to serve these sentences on March 27, 1943, according to the records of the Bureau of Prisons, he had served a total of three years seven months and three days up to October 30, 1946, exclusive of good conduct time allowance. Even if he be granted credit for good conduct time allowance, which on that date would have been nine months and three days, he would have served so far only four years, four months and six days, leaving a period of one year, five months and twenty-six days still to be served out.

Nevertheless, this does not make the validity of the impugned punishment a moot question, (even though the objection, as will presently be shown, does not constitute a good ground for allowance of habeas corpus). Article 70 of the Revised Penal Code, in providing a method for successive service of two or more sentences, directs that "in the imposition of the penalties, the order of their respective severity shall be followed." Applying this method in the present case, at least part of the sentence under attack still remains to be executed.

We will then now address ourselves directly to the legality of the sentence in case No. 1342.

The petitioner's contention that the lower court acted in excess of its jurisdiction and in violation of law when it pronounced this sentence, is predicated on the theory that case No. 1216 (1342) and its two companion cases were only one. The petitioner does not elaborate on this theory and we can only surmise what she is driving at. Nor has she furnished us with copies of the decisions rendered in these cases or stated the facts¹ of said cases and the circumstances surrounding the defendants' conviction therein. Without such data there is no means of verifying the existence of the alleged error.

It seems certain, however, that the trial court had jurisdiction of the person of the defendant and of the offense, that the sentence in question was within the limits provided by law for the crime, and that the defendant was not denied any fundamental or constitutional rights. Broadly speaking, only deprivation of these rights, lack of jurisdiction of the Court to impose the sentence, or excessive penalty affords ground for relief by habeas corpus. (39 C. J. S., 444.) Upon the petitioner's own showing, the alleged error, granting that it was committed, was a mere error of law or of fact or both, since it goes exclusively to the propriety or correctness of the appreciation of the aggravating circumstance of recidivism and the consequent application of the maximum penalty. There is no claim that the penalty in question is outside the prescribed bounds. As has been said, it does not go beyond the legal range. Judged by the amount involved, the offense was punishable under article 315, paragraph 3, of the Revised Penal Code with *arresto mayor* in its maximum period to *prision correccional* in its minimum period, or from four months and one day to two years and four months.

From all these considerations the conclusion must be that the writ prayed for cannot issue.

In a long line of decisions, this Court has consistently held that habeas corpus will not lie to correct errors of fact or law. (*Slade Perkins vs. Director of Prisons*, 58 Phil., 271; *Quintos vs. Director of Prisons*, 55 Phil., 304; *Trono Felipe vs. Director of Prisons*, 24 Phil., 121; *McMicking vs. Schields*, 238 U. S., 99; 41 Phil., 971.) When a court has jurisdiction of the offense charged and of the party who is so charged, its judgment, order or decree is not subject to collateral attack by habeas corpus. The writ of habeas corpus can not be made to perform the function

of a writ of error; and this holds true even if the judgment, order or decree was erroneous, provided it is within the jurisdiction of the court which rendered such judgment or issued such an order or decree. (Slade Perkins vs. Director of Prisons, supra.) Mere errors in point of law, however serious, committed by a criminal court in the exercise of jurisdiction over a case properly subject to its cognizance, can not be reviewed by habeas corpus. (McMicking vs. Schields, supra).

The petition is denied without costs.

Moran, C.J., Paras, Feria, Pablo, Bengzon, and Briones, JJ., concur.

MORAN, C. J.:

I certify that Mr. Justice Padilla concurred in this decision.

DISSENTING

PERFECTO, J.:

Prisoner Elpidio S. Cruz has been confined in prison since March 27, 1943, and since then up to October 30, 1946, the date of respondent's return, he has been deprived of his personal freedom for a total of 3 years, 7 months and 3 days.

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He is serving sentence under commitments in three criminal cases. The total imprisonment imposed in all of them amounts to 1 year, 8 months and 1 day. It is, therefore, evident that up to October 30, 1946, date of respondent's return, said prisoner has been illegally deprived of his liberty for almost two years, that is, 1 year, 11 months and 2 days. At the promulgation of the decision in this case, said prisoner shall appear as having been illegally deprived of his liberty much more than two years.

The majority justifies the continued confinement of Elpidio S. Cruz because on June 3, 1943, the Commissioner of Justice of the Executive Commission under the Japanese regime recommitted him to serve the unexpired portion of the maximum aggregate sentence imposed in three other cases. Said unexpired portion was 5 years, 2 months and 1 day.

Said recommitment, having been issued under the authority of the Japanese imperial forces of occupation, is null and void and should not be given any effect, according to the theory we have expressed in our dissenting opinion in the Co Kim Cham case (75 Phil., 113), which may be read for further elaboration of the theory.

We also dissent from the following pronouncements in the majority decision:

"It seems certain, however, that the trial court had jurisdiction of the person of the defendant and of the offense, that the sentence in question was within the limits provided by law for the crime, and that the defendant was not denied any fundamental or constitutional rights. Broadly speaking¹, only deprivation of these rights, lack of jurisdiction of the court to impose the sentence, or excessive penalty affords ground for relief by habeas corpus, (39 C. J. S., 444.)

* * * * *

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decree is not subject to collateral attack by habeas corpus. The writ of habeas corpus can not be made to perform the function of a writ of error; and this holds true even if the judgment, order or decree was erroneous, provided it is within the jurisdiction of the court which rendered such judgment or issued such an order or decree. (*Slade Perkins vs. Director of Prisons*, supra.) Mere errors in point of law, however serious, committed by a criminal court in the exercise of jurisdiction over a case properly subject to its cognizance, cannot be reviewed by habeas corpus. (*McMicking vs. Schields*, supra.)"

The pronouncements and the authorities invoked in support therein are all premised on a wrong idea of the nature of the writ of habeas corpus. The writ is the extraordinary remedy resorted to in order to give redress to all cases of illegal deprivation of liberty, and the limitations advanced in the majority's pronouncements have the effect of changing the true nature of the writ.

For all the foregoing, we vote that the petition be granted and prisoner Elpidio S. Cruz be immediately released.

DISSENTING

HILADO, J.:

I join in the dissent of Mr. Justice Perfecto, only adding by reference my own reasons in support of my dissenting opinion in the *Co Kim Cham* case (75 Phil., 113) mentioned therein, both from the main decision and from the resolution on the motion for reconsideration in said case, as well as those stated in my dissenting and concurring opinions in allied cases not here necessary specifically to mention.

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