

ANTONIO C. OGNIR, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-1870. February 27, 1948

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for habeas corpus by the petitioner against the Director of Prisons.

The petitioner was convicted by the General Court-Martial appointed or convened during the year 1943 in Lanao by Colonel Wendel W. Fertig, Commanding Officer of the 10th Military District of Mindanao, and sentenced to life imprisonment, for violation of the 93rd Article of War of the Philippine Army. He now claims that his imprisonment is null and void because the said General Court-Martial was not legally constituted, inasmuch as District Commander that appointed or convened it had no authority to do so, and therefore the judgment of said court is null and void for want of jurisdiction.

The only question to be determined in the present case is whether or not the General Court-Martial which sentenced the petitioner to life imprisonment, was legally appointed or convened. For it is a well established rule that a judgment rendered by a military court which is not legally constituted is treated not only as voidable but void and subject to collateral attack, *McClaghry vs. Deming*, 186 U. S., 49; 46 Law. ed., 1049.

Article 8, Commonwealth Act No. 408 which provides the following:

"General Courts-Martial—The President of the Philippines, the Chief of Staff of the Philippine Army, and, when empowered by the President, the Provost Marshal General, the Commanding Officer of a Division, the District Commander, the Superintendent of the Military Academy, the Commanding Officer of a separate brigade or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority, and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution or for the defense."

There is nothing in the record or in the return filed by the respondent to show that Col. Wendel W. Fertig, Commanding Officer of the 10th Military District of Mindanao had ever been empowered to appoint a General Court-Martial, by the President of the Commonwealth, or by General McArthur, Supreme Commander of the U.S. Army in Southwest Pacific Area, assuming that the military powers of the President of the Commonwealth as Commander in Chief of the Philippine Army was ipso facto transferred to said Supreme Commander when the Commonwealth Government of the Philippines evacuated to Australia and then to the United States. The appointment of Colonel Fertig as Commander of the 10th Military District of Mindanao does not carry with it the power to convene General Court-Martial. According to the above quoted provision of article 8, Commonwealth Act No. 408, the only officers who have such inherent power by virtue of their position are the President of the Commonwealth and the Chief of Staff of the Philippine Army. All other officers such as the Provost Marshal and Commanding Officer of a separate brigade or body of troops, and Colonel Fertig may come within the latter

category, can not appoint a General Court-Martial unless expressly empowered by the President to do so.

"While courts-martial, not being 'inferior courts' to the Supreme Court under the Constitution, cannot be appealed from to any civil court, or controlled or directed by the decree or mandate of such a court, yet in our U. S. Courts, similarly as in the English tribunals, the writ of habeas corpus may be availed of by a prisoner claiming to be illegally detained under trial or sentence of court-martial, and in this proceeding the legality of the action of the court—as whether it was legally constituted, or had jurisdiction, or its sentence was authorized by the code—may be inquired into." (Winthrop's Military Law and Precedents, 2d ed., Vols. 1 and 2, p. 52.)

In view of the foregoing, we are of the opinion and so hold that the judgment rendered by the General Court-Martial that sentenced the petitioner to life imprisonment is null and void, because said court was not duly convened or appointed in accordance with law and, therefore, had no jurisdiction to render said sentence.

The petitioner being illegally detained, respondent is ordered to release him immediately. So ordered.

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

PERFECTO, J.:

We concur in this decision, but we do not accept Winthrop's theory that courts-martial are not inferior courts to the Supreme Court under the Constitution. All other courts are inferior to the Supreme Court. The constitutional text is clear enough.

RESOLUTION ON A MOTION FOR RECONSIDERATION

May 12, 1948

FERIA, J.:

A motion for reconsideration of our decision was filed in this case by the Judge Advocate General of the Philippine Army and Solicitor Antonio A. Torres, on the ground: (1) that the General Court-Martial which convicted the defendant had been convened not by Col. Fertig, but by LT. Col. Hodges of the 18th Division, 10th Military District; (2) that as a matter of fact Col. Fertig was expressly authorized by Gen. MacArthur to convene such court; and (3) that the decision of the General Court-Martial which convicted the petitioner may be given the same effects as the actuation of the civil courts during the Japanese occupation.

As to the first ground, according to the return filed by the First Assistant Solicitor General and the Solicitor Antonio Torres, "The records of this case on file with the Judge Advocate General Office, Philippine Army, disclose that the petitioner, together with one Private Elinio Pagaling, was charged with violation of the 93rd Articles of War before a general court-martial appointed by Colonel Wendell W. Fertig, Commanding Officer of the 10th Military District (Mindanao) pursuant to paragraph 9, Special Order 124, Headquarters, 108th Division, CPQ, Series of 1944, as amended." According to section 13, Rule 102 of the Rules of Court, the return is prima facie evidence of the cause of restraint, that is, that the petitioner was confined by virtue of a judgment of conviction rendered by a Court-Martial convened or appointed by said officer Colonel Fertig, and there is no mention whatever of Lt. Col. Hodges in said return. Therefore, the contention or allegation in paragraph 4 of the motion for reconsideration that "the decision of this Honorable Court was erroneously based on the assumption that the Court-Martial which convicted the petitioner was appointed and convened by Colonel Wendell W. Fertig, when in truth and in fact said Court was appointed by Lt. Col. Hodges, Division Commander of the 108 Division, 10th Military District," is a reckless allegation.

With regard to the second ground, assuming, contrary to the return, that Lt. Col. Hodges was the one who

convened the General Court-Martial, and not Col. Fertig, there is nothing in the record to show or support the allegation that either Col. Fertig or Lt. Col. Hodges was ever authorized by General MacArthur to convene or appoint the General Court-Martial which convicted the petitioner. The Exhibit I attached to the motion for reconsideration, that purports to be an affidavit dated March 8, 1918, of one Captain F. S. Lagman, states among others that "a radiogram to GHQ, SWPA was transmitted requesting for an authorization sometime in 1943, as far as I remember. After the said request, it is my recollection that an authority was granted him to appoint Special and General Court-Martial." The statement in Exhibit I does not deserve any credit. In the first place, the so-called affidavit is not signed; the names F. S. Lagman appearing as affiant, and Jose R. Catibog as the officer before whom the so-called affidavit is supposed to have been sworn to, are not signed but typewritten. (2) Secondly, said Lagman does not affirm that his recollection is based on the fact that he personally received such radiogram. On the contrary, as he states that "as an Adjutant General, I had access, as custodian of all records to all incoming and outgoing official communications of our headquarters," it is to be inferred that he had obtained such information from the record, and the best evidence is the record itself or the original transcription of radiogram received, there being no showing that it was lost or destroyed. Thirdly, Lagman refers to an authority granted (he does not say by whom) to Colonel Fertig to convene Special and General Courts-Martial, and not to Lt. Colonel Hodges who, according to Exhibit 3 of the motion for reconsideration, convened the General Court-Martial in question; and therefore, even assuming without deciding that Col. Fertig was granted such authority, the General Court-Martial in question convened by Lt. Col. Hodges is null and void for the latter had no authority to do so. And fourthly, Circular No. 34 of the Commonwealth of the Philippine Army Headquarters Apo 75, Appendix B to the petitioner's petition (admitted and not denied as a correct copy of the original), belies the gratuitous assumption that Lt. Col. Hodges had authority to convene said General Court-Martial, for said circular provides that "General Courts-Martial, appointed by District Commanders from 1942 to 1944 are not covered by this order (Executive Order that empowers District Commander to convene general courts-martial), otherwise it would be giving the order its retroactive effect," and that "General Courts-Martial appointed by recognized guerilla District Commanders prior to June 6, 1945, must show authority for the appointment." (Italics ours.)

(3) and regarding the third ground, the contention that the proceedings of the General Court-Martial under consideration "may be given effect as the actuation of de facto officers in the same manner as the pronouncement of Civil Tribunals set up during the second Republic," is untenable; because there is no analogy between the decision of the courts established by the Military Government or the so-called second Republic, and that of the General Court-Martial which convicted the petitioner. The courts of the Commonwealth legally constituted which were continued during the so-called Philippine Republic, and the other courts during the Japanese occupation were legally created by laws which, under the International Law, the Military occupant had the right to promulgate. While the said General Court-Martial was created or convened by an officer having no power or authority to do so.

Paras, Pablo, Bengson, Padilla, and Tuason, JJ., concur.

HILADO, J.:

I concur in the result, but dissent from the declaration that the Commonwealth courts were continued during the so-called Philippine Republic. As I have so often contended, the occupation courts were different from the Commonwealth courts—the majority have held the former de facto, but we all agree the latter were de jure. The former were courts of the occupation regime, the latter of the lawful government.

PERFECTO, J.:

We join in this opinion of Mr. Justice Hilado.

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