

ZOSIMO L. ABANTO (ALIAS MAXIMO FERNANDEZ), PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-668. July 13, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

Zosimo L. Abanto filed a petition for a writ of habeas corpus to seek the annulment of the sentence rendered in ease Ho. 130 by the Japanese imperial military authorities on March 13, 1942, imposing upon him a penalty of 13 years, 8 months and 1 day of imprisonment, plus an additional penalty of 12 years and 1 day for habitual delinquency, for which he was committed by Eugenio Dizon, Noting Chief of the Secret Service of Manila, to the New Bilibid Prison, where petitioner began serving said sentence on April 29, 1942.

The Solicitor General, on the strength of our decision rendered on April 25, 1946, in the case of Mamerta Reyes vs. Director of Prisons, (p. 561, ante), answering the petition, concurred in petitioner's prayer that the above-mentioned sentence be declared without any legal effect, but recommending that petitioner be declared subject to further detention until the indeterminate sentence of from 4 months to 4 years, 9 months and 10 days of imprisonment imposed upon him on September 10, 1942, by the Court of First Instance of Manila in case No. 65166, shall have been fully served, the legality of said sentence having been expressly recognized by petitioner and is upheld by a majority of this Court in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113)

It appearing that no sentence has ever been rendered by any competent military tribunal or court of justice in case No. 130, the petitioner's confinement in said case No. 130 is null and void ab initio; but conformably with the Solicitor General's recommendation, petitioner shall have to serve the sentence Imposed upon him by the Court of First Instance of Manila in case No. 65166. Service of his sentence should be understood to have commenced from September 10, 1942.

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

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