

JESUS ALVARADO, IN BEHALF OF HIS BROTHER, ANICETO ALVARADO Y COMO, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-3951. August 07, 1950

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for the writ of habeas corpus filed by Jesus Alvarado in behalf of Aniceto Alvarado y Como, at present confined in Bilibid Prison, Muntinlupa, Rizal.

It is alleged that the petitioner was, on June 21, 1947, found guilty of theft by the Court of First Instance of Manila and sentenced to an indeterminate imprisonment of from four months and one day to two years, four months and one day. Having appealed to the Court of Appeals, the latter court affirmed the judgment in a decision promulgated on March 29, 1948. Before and during the trial and the appeal, the accused, petitioner herein, was in jail as a detention prisoner.

The petitioner claims that having actually served two years, three months and eighteen days, without counting the nearly one-year period that he was under preventive imprisonment, and adding to this the good conduct time allowance of four months and twenty-eight days to which he is entitled pursuant to Article 97 of the Revised Penal Code, he has garnered to his credit a total imprisonment of two years, eight months and sixteen days as against two years, four months and one day which is the maximum of his indeterminate penalty.

In his return filed in behalf of the Director of Prisons, the respondent, the Solicitor General agrees that the petition should be granted.

By Sections 8 and 9 of Rule 53 in relation to Section 17 of Rule 120, a judgment is entered 15 days after its promulgation, and 10 days thereafter, the records are remanded to the court below including a certified copy of the judgment for execution.

In the case of *People vs. Sumilang*, (44 Off. Gaz., 881, 883; 77 Phil., 764), it was explained that "the certified copy of the judgment is sent by the Clerk of the appellate court to the lower court under Section 9 of Rule 53, not for the promulgation or reading thereof to the defendant, but for the execution of the judgment against him," it "not being necessary to promulgate or read it to the defendant, because it is to be presumed that accused or his attorney had already been notified thereof in accordance with Sections 7 and 8, as amended, of the same Rule 53," and that the duty of the Court of First Instance in respect to such judgment is merely to see that it is duly executed when in their nature the intervention of the Court of First Instance is necessary to that end.

Following the above rule, it was unnecessary for the Court of First Instance to set the decision of the Court of Appeals for reading or promulgation for October 18, 1948, as it did, and it was error to make the period of imprisonment commence on that date as was done in this case. Inasmuch as the petitioner did not appeal from the decision of the Court of Appeals, and since, as above stated, he was already in prison at the time that judgment

was promulgated, he was deemed to have submitted himself for the execution of the said judgment as of the date of its promulgation.

Computed, as above stated, the imprisonment expired on June 30, 1950, without good conduct allowance, or on March 30, 1950, with good conduct allowance. In either case the petitioner is entitled to discharge.

The respondent is ordered forthwith to release the petitioner from custody unless he is detained for some other lawful cause.

Moran, C. J., Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

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