

PRISONER ROMEO CANARY, PETITIONER, VS. DIRECTOR OF PRISONS, RESPONDENT.

Undocketed Nos. 507-508. November 26, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

Petitioner invokes the protection of the constitutional provision on double jeopardy^[1] in this habeas corpus proceeding filed with this Court on October 26, 1970. He alleged that he is under confinement in the New Bilibid Prisons, Muntinlupa, Rizal, by virtue of judgments in two criminal cases^[2] arising from the single crime of evasion of a service of sentence, he, having escaped from Muntinlupa, Rizal on July 6, 1963, while legally serving his time for a previous offense. It is his contention that in connection with the afore-said escape on July 6, 1963, which gave rise to one offense, two courts of first instance had imposed upon him two different penalties, thus yielding the conclusion that the prohibition against being twice put in jeopardy of punishment for the same offense was violated.

On the next day, the writ of habeas corpus prayed for was issued by this Court, respondent Director of Prisons being required to file an answer to the petition not later than November 2, 1970.

With the return and answer of respondent Director of Prisons through the Solicitor General, an entirely different complexion was placed on the matter. As set forth therein: "Before the said writ of habeas corpus was served upon respondent on October 28, 1970, the petitioner was and now is in his custody in New Bilibid Prison in Muntinlupa, Rizal, by virtue of the final judgment rendered and warrant of commitment issued by the Court of First Instance of Manila in Criminal Case No. 29028 entitled *People of the Philippines vs. Romeo Canary*, duly convicting petitioner of the crime of homicide and sentencing him to eight years of prison mayor as minimum of seventeen years, four months and one day of reclusion temporal as maximum, which sentence petitioner began to serve on February 4, 1959 and has not yet completed serving. Respondent is also detaining petitioner by virtue of the final judgment rendered and warrant of commitment issued by the Court of First Instance of Rizal in Criminal Case No. 990-R entitled *People of the Philippines vs. Romeo Canary*, duly convicting petitioner of the crime of evasion of service of sentence and sentencing him to two years, four months and one day of prison correccional, which petitioner will begin to serve after he shall have served out his sentence for homicide."^[3]

Then came this paragraph: "Respondent does not deny that after petitioner escaped from respondent's custody on July 6, 1963 and was recaptured and recommitted to respondent's custody on November 2, 1963, petitioner was charged with evasion of sentence in both the Court of First Instance of Manila and the Court of First Instance of Rizal, and that the Court of First Instance of Manila sentenced him upon his plea of guilty to a term of imprisonment of three years, six months and twenty-one days, while the Court of First Instance of Rizal, also upon his plea of guilty, sentenced him to suffer an imprisonment of two years, four months and one day."^[4]

The circumstances of petitioner's detention was explained in the return and answer thus: "Respondent is detaining petitioner as aforesaid by virtue of petitioner's conviction for the crime of homicide by the Court of First Instance

of Manila in Criminal Case No. 29028 and of his conviction for the crime of evasion of sentence by the Court of First Instance of Rizal in Criminal Case No. 990-R, disregarding altogether the judgment of conviction and warrant of commitment issued by the Court of First Instance of Manila in Criminal Case No. 73142 for having been rendered without jurisdiction." [5] The lack of merit in the petition is apparent from this allegation in the return and answer of respondent Director: "By respondent's computation, petitioner shall have served his sentence for homicide on December 21, 1971, whereupon he will begin to serve his sentence for evasion of sentence and shall have served it out on October 24, 1973." [6]

Petitioner clearly is not thus entitled to liberty. The petition for habeas corpus must be dismissed.

While the petition for habeas corpus exists to provide a speedy and expeditious remedy to safeguard the liberty of any individual from illegal confinement, the power of inquiry by the judiciary is not as broad once it is shown that the person alleged to be thus deprived of his liberty is in the custody of an officer like respondent Director of Prisons by virtue of a judgment or order of a court of record, unless the lack of jurisdiction of such court could be shown. It is now well-settled, of course, that a deprivation of a constitutional right suffices to oust the court of jurisdiction and, under the circumstances, habeas corpus would be the appropriate remedy to assail the validity of such detention. [7] If petitioner here were able to demonstrate that there was a transgression of his right not to be twice put in jeopardy of punishment for the same offense, our duty is clear. His freedom should be restored to him. With the allegation in the return and answer of respondent Director of Prisons, however, that he is serving a sentence for homicide, the validity of which petitioner has not disputed, his resort to the remedy of habeas corpus is, to say the least, premature. Without passing, then, on the question of the anomalous situation arising from two courts of first instance sentencing petitioner for the identical offense of evasion of service of sentence, we rule that this special proceeding lacks merit.

WHEREFORE, the petition for habeas corpus is dismissed. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Teehankee, Barredo, and Villamor, JJ., concur.

Dizon and Makasiar, JJ., on official leave.

[1] "No person shall be twice put in jeopardy of punishment for the same offense." Art. III, Sec. 1, par. 20, Constitution of the Philippines.

[2] Criminal Case No. 73142 of the Court of First Instance of Manila and Criminal Case No. 990-R of the Court of First Instance of Rizal.

[3] Return and Answer, par. I.

[4] Ibid, par. II.

[5] Ibid, par. III.

[6] Ibid, par. IV.

[7] Cf. *Conde v. Rivera*, 45 Phil. 650 (1924); *Harden v. Director of Prisons*, 81 Phil. 741 (1948); *Abriol v. Homeres*, 84 Phil. 525 (1949); *Chavez v. Court of Appeals*, L-29169, Aug. 19, 1968, 24 SCRA 663; *Celeste v. People*, L-31435, Jan. 30, 1970, 31 SCRA 391.

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