

FLOREÑA SALES, ON BEHALF OF HER STEPFATHER FIDEL ARISTÓN, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-3972. October 13, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

This is an original petition for habeas corpus filed on behalf of prisoner Fidel Aristón, now confined in the New Bilibid Prison.

It appears that on August 31, 1939, Fidel Aristón was convicted of frustrated murder by the Court of First Instance of Camarines Sur and sentenced to suffer from 1 year and 8 months of prisión correccional to 7 years of prisión mayor. After serving 2 years, 3 months, and 1 day of that sentence, he was released on January 6, 1942, by virtue of a conditional pardon granted him by the President of the Philippines, the condition being that he shall not again violate any of the penal laws of the Philippines and that, should this condition be violated, he shall be proceeded against in the manner prescribed by law.

On February 1, 1950, said prisoner was recommitted to the custody of the Director, of Prisons after having been convicted of estafa and sentenced by the Court of First Instance of Manila to suffer 3 months and 11 days of arresto mayor and to indemnify the offended party in the amount of P180, with subsidiary imprisonment in case of insolvency.

On April 10, 1950, the Executive Secretary, by authority of the President and by virtue of the authority conferred upon the President by section 64 (I) of the Revised Administrative Code, ordered the Director of Prisons to recommit to prison the said prisoner Fidel Aristón to serve the remaining unexpired portion of the sentence for which he was originally committed to prison, in view of the fact that he had violated the condition of his pardon in that he was subsequently convicted of estafa by the Court of First Instance of Manila.

The present petition for habeas corpus is premised upon the contention that the President has no authority to order the prisoner's recommitment to serve the unexpired portion of his original sentence, because violation of a conditional pardon is an offense penalized by article 159 of the Revised Penal Code, and that, unless the prisoner is prosecuted for and convicted of that offense, he cannot be compelled to serve the unexpired portion of his original sentence.

Said article 159 reads as follows:

"ART. 159. Other Cases of Evasion of Service of Sentence.—The penalty of prisión correccional in its minimum period shall be imposed upon the convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon. However, if the penalty remitted by the granting of such pardon be higher than six years, the convict shall then suffer the unexpired portion of his original sentence."

On the other hand, the President of the Philippines is authorized by section 64 (i) of the Revised Administrative

Code:

"(i) To grant to convicted persons reprieves or pardons, either plenary or partial, conditional, or unconditional; to suspend sentences without pardon, remit fines, and order the discharge of any convicted person upon parole, subject to such conditions as he may impose; and to authorize the arrest and reincarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole, or suspension of sentence." (Italics ours.)

The only question to determine is whether the above-quoted provision of the Revised Administrative Code has been repealed by section 159 of the Revised Penal Code.

The Revised Penal Code, which was approved on December 8, 1930, contains a repealing clause (article 367), which expressly repeals among other Acts sections 102, 2670, 2671, and 2672 of the Administrative Code. It does not repeal section 64 (i) above quoted. On the contrary, Act No. 4103, the Indeterminate Sentence Law, which is subsequent to the Revised Penal Code, in its section 9 expressly preserves the authority conferred upon the President by section 65 (i) of the Revised Administrative Code.

The legislative intent is clear, therefore, to preserve the power of the President to authorize the arrest and reincarceration of any person who violates the condition or conditions of his pardon notwithstanding the enactment of article 159 of the Revised Penal Code. In this connection, we observe that section 64 (i) of the Administrative Code and article 159 of the Revised Penal Code are but a reiteration of Acts Nos. 1524 and 1561, under which a violator of a conditional pardon was liable to suffer and to serve the unexpired portion of the original sentence.

It is contended by the petitioner that the power vested in the President by section 64 (i) of the Revised Administrative Code to authorize the arrest and reincarceration of a violator of a conditional pardon is repugnant to the due process of law granted by the Constitution (sec. 1, Article III). A similar contention was advanced by the petitioner in the case of *Fuller vs. State of Alabama* (45 L. R. A., 502), and was rejected by the Supreme Court of that state, speaking thru Chief Justice McClellan, in the following language:

"But it is insisted that this statute, in so far as it undertakes to authorize the governor to determine that the condition of the parole has not been complied with, and the summary arrest of the convict thereupon by the direction of the governor, and his summary return or remandment to servitude or imprisonment under the sentence, is violative of organic guaranties of jury trial, that no warrant shall be issued to seize any person without probable cause, supported by oath or affirmation, etc. This position takes no account of the fact that the person being dealt with is a convict, that he has already been seized in a constitutional way,, been confronted by his accusers and the witnesses against him, been tried by the jury of his peers secured to him by the Constitution, and by them been convicted of crime, and been sentenced to punishment therefor. In respect of that crime and his attitude before the law after conviction of it, he is not a citizen, nor entitled to invoke the organic safeguards which hedge about the citizen's liberty, but he is a felon, at large by the mere grace of the executive, and not entitled to be at large after he has breached the conditions upon which that grace was extended to him. In the absence of this statute, a convict who had broken the conditions of a pardon would, if there were no question of his identity or the fact of breach of the conditions, be subject to summary arrest, and remandment, as matter of course, to imprisonment, under the original sentence by the court of his conviction, or any court of co-ordinate or superior jurisdiction,—a purely formal proceeding. If the person arrested denied his identity with the convict sought to be remanded, he might be entitled to a jury trial on that issue alone. If he denied only the alleged breach of the conditions of his enlargement, he would not be entitled to a jury on that issue, but it would be determinable in a summary way by the court before whom he is brought. But the statute supervenes to avoid the necessity for any action by the courts in the premises. The executive clemency under it is extended upon the conditions named in it, and he accepts it upon those conditions. One of these is that the governor may withdraw his grace in a certain contingency, and another is that the governor shall himself

determine when that contingency has arisen. It is as if the convict, with full competency to bind himself in the premises, had expressly contracted and agreed that, whenever the governor should conclude that he had violated the conditions of his parole, an executive order for his arrest and remandment to prison should at once issue, and be conclusive upon him. Of course, if, in the execution of the order of arrest, the wrong man should be taken, he would be entitled to enlargement on habeas corpus; but there is no question of identity in the case before us. Upon such determination by the governor, evidenced by the executive order of arrest, the parole is avoided, and the person who has been at large upon it at once falls into the category of an escaped convict, so far as measures for his apprehension and remandment under the original sentence are concerned, and he is, no more than an escaped convict, entitled to freedom from arrest, except upon probable cause, supported by oath or affirmation, nor to a trial by jury, nor to his day in court for any purpose. *Kennedy's Case*, 135 Mass., 48; *Conlon's Case*, 148 Mass., 168; *Arthur vs. Craig*, 48 Iowa, 264; 30 Am. Rep., 395; *State, O'Connor vs. Wolfer*, 53 Minn., 135; 19 L. R. A., 783."

A similar ruling was laid down in *Kennedy's Case* (135 Mass., 48) ; and in *People vs. Dudley* (173 Mich., 389).

We are of the opinion that article 159 of the Revised Penal Code, which penalizes violation of a conditional pardon as an offense, and the power vested in the President by section 64 (i) of the Revised Administrative Code to authorize the recommitment to prison of a violator of a conditional pardon to serve the unexpired portion of his original sentence, can stand together and that the proceeding under one provision does not necessarily preclude action under the other. Take, for instance, the case of the present prisoner Fidel Aristón. Although under section 64 (i) of the Revised Administrative Code he has been recommitted to serve the remitted portion of his original sentence—4 years, 8 months, and 29 days—for having violated the condition of his pardon, he may still be prosecuted under article 159 of the Revised Penal Code and sentenced to suffer *prisión correccional* in its minimum period. In other words, one who violates the condition of his pardon may be prosecuted and sentenced to suffer *prisión correccional* in its minimum period without prejudice to the authority conferred upon the President by section 64 (i) of the Revised Administrative Code to recommit him to serve the unexpired portion of his original sentence, unless such unexpired portion exceeds 6 years, in which case the penalty of *prisión correccional* in its minimum period provided by article 159 of the Revised Penal Code shall no longer be imposed.

There is no dispute in this case as to the identity of the prisoner and as to the violation by him of his conditional pardon.

Wherefore, the petition is denied, with costs de oficio, the petitioner having been authorized to litigate as a pauper.

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

PARAS, J., dissenting:

With reference to the power of the Governor General (now President) of the Philippines to grant conditional pardons, Act No. 1524 of the Philippine Commission, approved on August 9, 1906, provides for the procedure by which a person conditionally pardoned is recommitted to prison for the unexpired portion of his original sentence if guilty of a violation of any condition of his pardon. The procedure, in substance, was for the proper court of first instance to investigate, in the presence of the accused and the proper prosecuting official, whether any condition was in fact violated.

By virtue of section 64, paragraph (i), of the Revised Administrative Code of 1917, the President of the Philippines is empowered "to authorize the arrest and re-incarceration of any such person who, in his judgment,

shall fail to comply with the condition, or conditions, of his pardon, parole, or suspension of sentence."

In the Revised Penal Code approved on December 8, 1930, but effective on January 1, 1932, article 159 provides as follows: "The penalty of prisión correccional in its minimum period shall be imposed upon the convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon. However, if the penalty remitted by the granting of such pardon be higher than six years, the convict shall then suffer the unexpired portion of his original sentence." The question that arises is whether the President can still, under section 64 (i) of the Revised Administrative Code, order the recommitment of a convict violating any condition of his pardon. This should be answered in the negative. While it may be granted, with some degree of plausibility, that even after the Revised Administrative Code of 1917 had taken effect, the procedure prescribed in Act No. 1524 might be followed concurrently with the power of the President to order the recommitment under section 64 (i) of said Code, because the result is the same, in that in both cases the convict will have to be recommitted for the unexpired portion of his original sentence, the same consideration is not true after the passage of the Revised Penal Code which makes the violation of a conditional pardon a crime, punishable by a specific penalty, namely, prisión correccional in its minimum period or, if the penalty remitted be higher than six years, imprisonment for the unexpired portion of his original sentence.

Under article 159 of the Revised Penal Code, violators of conditional pardons will therefore receive the uniform penalty of prisión correccional in its minimum period, or from 6 months and 1 day to 2 years and 4 months, or, if the penalty remitted be higher than six years, imprisonment for the unexpired portion of the original sentence. If a 6-year term has served one year before being conditionally pardoned, and subsequently violates the condition of his pardon, he will have to be recommitted under section 64 (i) of the Revised Administrative Code for the unexpired term of five years, whereas if he is pardoned after serving 5 years and 10 months, he will have to be recommitted for the unexpired term of only two months. Under article 159 of the Revised Penal Code, the term of imprisonment he will have to suffer, if convicted, will be within the range of only from prisión correccional in its minimum period, whether the unexpired term is five years or two months. If we admit the proposition that section 64 (i) of the Revised Administrative Code and article 159 of the Revised Penal Code may co-exist, cases will arise in which, either to favor or to prejudice a violator of a conditional pardon, the Government may or may not choose to exercise the power granted to the President by section 64 (i) of the Revised Administrative Code. In example already given, where the unexpired portion is only two months, the violator may be recommitted to favor him. Reserving the situation, if the unexpired term is five years, he may be recommitted to prison to prejudice him. The objectionable feature, in addition to the circumstance that the Revised Penal Code requires a hearing—which is not necessary under the Revised Administrative Code,—warrant the conclusion that the two provisions cannot be harmonized.

The same considerations may have impelled the Constitutional Convention not to adopt the recommendation of the Committee on Executive Power to include a proviso empowering the President to authorize the arrest and re-incarceration of such person who in his judgment shall fail to comply with the condition or conditions of his pardon, parole, or suspension of the sentence, it being noteworthy that the convention merely provided that the President "shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose." (Constitution, Art. VII, sec. 10, par. 6; Aruego, *Framing of the Constitution*, Vol. II, p. 435.)

It should be remembered also that the Revised Penal Code, in article 367, has repealed all laws and parts of laws which are contrary to the provisions of said code. Having shown the inconsistent results if section 64 (i) of the Revised Administrative Code and article 159 of the Revised Penal Code were considered co-existent, the first

provision in so far as it refers to the power of the President to recommit a violator of a conditional pardon for the unexpired term, must be deemed repealed.

My vote is, therefore, to grant the petition for habeas corpus, without prejudice.

FERIA, J., with whom concurs PARAS, J., dissenting:

At the outset it is important to observe that parole and pardon are two different things. Parole is a conditional release of a prisoner with an unexpired sentence, or suspension of his sentence, without remitting the penalty-imposed upon him; while pardon is a remission of the penalty imposed upon a defendant together with all the accessories appurtenant thereto.

Sections 3 and 4 of Act No. 1524 providing for the enforcement of condition made by the Governor-General in the exercise of his discretion in granting conditional pardon, read as follows:

"No. 1524.—An Act providing for the enforcement of conditions made by the Governor-General in the exercise of his discretion in granting conditional pardons.

* * * * *

"SEC. 3. Whenever the provincial fiscal, or the prosecuting attorney of the City of Manila, as the case may be, shall ascertain that any of the conditions of a conditional pardon, heretofore or hereafter granted, has been violated by the person so conditionally pardoned, he shall apply to the court of first instance for an order of arrest against the person so conditionally pardoned to have him brought before the court. The court of first instance shall issue the order of arrest and proceed with the investigation of the facts, in the presence of the accused and the proper prosecuting official.

"SEC. 4. If the court shall find from said investigation that one or more of the conditions of such pardon, heretofore or hereafter granted, has been violated by the person so pardoned, the court shall order the recommitment and confinement of such person in the proper prison for the unexpired portion of his original sentence. Such order of the court shall be sufficient authority to the custodian of any public prison designated therein to receive and safely keep the body of the person so conditionally pardoned during the unexpired portion of his original sentence."

Section 2 of Act No. 1561, authorizing the Governor-General to parole prisoners and providing for the enforcement of the conditions of such parole, provides:

"No. 1561.—An Act authorizing the Governor-General to parole prisoners and providing for the enforcement of the conditions of such paroles.

* * * * *

"SEC. 2. Upon the failure of any convict to observe the conditions of his parole, to be determined by the Governor-General, the Governor-General shall have authority to direct the arrest and return of such convict to custody, and thereupon said convict shall be required to carry out the sentence of the court as though no parole had been granted him, the time between the parole and subsequent arrest not being taken as a part of the term of his sentence in computing the period of his confinement."

Evidently the reason why under Act No. 1524 an investigation of the facts by the courts is necessary for the purpose of determining whether the condition of a pardon has been violated by the person so pardoned before he can be recommitted to prison, while in the case of violation of parole no such investigation is required and the, sole judge of any violation of the parole is the Chief Executive, who may, summarily, order the arrest and

reincarceration of the convict, is that the violation of a conditional pardon is more serious than that of a parole, since pardon is more beneficial than parole.

As the Administrative Code of 1916 and the Revised Administrative Code of 1917 did not repeal and incorporate the provisions of Act No. 1524, but repealed Act No. 1651 and incorporated its provisions in section 80 (i) of the Administrative Code of 1916, which is section 64 (i) of the Revised Administrative Code, the word "pardon" in the last line of said section must have been inserted through inadvertence, and according to the maxims "utile par inutile non vitiatur," and "surplusagium non nocet," it must be disregarded, for the following reasons:

(1) Section 80 (l) of the original Administrative Code of 1916 expressly cites 1 and 2 of Act No. 1561, and not Act 1524, as the only source thereof, while Act No. 1524 was not repealed, either totally or partially, by the Administrative Code of 1916 or the Revised Administrative Code of 1917. If it were the intention of the Code Committee to amend the provision of said Act No. 1524 and do away with the hearing and investigation of the charged violation by the court, it would have repealed said Act No. 1524 and expressly incorporated its provisions in the Revised Administrative Code.

(2) It is a well known rule of statutory construction that statutes introduced in these Islands under the American sovereignty like Act No. 1524 and Act No. 1561 as incorporated in section 64 (i) of the Revised Administrative Code, must be construed and applied in the lights of the rules, principles and doctrine of the common law (Alzua and Arnalot vs. Johnson, 21 Phil., 308). Therefore, the question whether or not Act No. 1524 has been repealed by and incorporated in section 64 (i) of Revised Administrative Code must be answered in the negative; because "In nearly every jurisdiction wherein the question has been raised it has been held that a convicted defendant released under suspended sentence (parole or conditional pardon) is entitled to notice and hearing on the issue whether he has broken the conditions or the suspension before the suspension may be revoked" (54 A. L. R., Ann., p. 1471). And "it seems to be the more general rule that in the absence of a statute to the contrary, on an express reservation in the parole or pardon of the power of summary revocation, a convict who has been released under a parole or conditional pardon is entitled to notice and an opportunity to be heard before some court or body of competent jurisdiction, either by writ of habeas corpus or otherwise, on the question whether the conditions of the parole or conditional pardon has been violated before it can be effectively revoked." (54 A. L. R., Ann., p. 1474.)

The cases of Fuller vs. State of Alabama on parole (122 Ala., 52) quoted, Kennedy case on conditional pardon (173 Mich., 389) cited in the decision in support thereof, are exceptions to the above quoted general rule, and based upon express statutory provision authorizing such procedure. (54 A. L. R., Ann., p. 1479.)

(3) Act No. 1941, creating a Code Committee, authorizes the Committee to revise and amend the Civil, Commercial, Penal and Procedure Codes in force in the Philippine Islands, and to prepare new Codes upon said subjects, in accordance with modern principle of the science of law and with the customs of the country. But section 7 of the same Act No. 1941 only empowers the Code Committee, "whenever the Governor-General shall decide that the public interest requires it and shall so order, to revise, compile and codify the existing general statutes of the Philippine Commission and Philippine Legislature," not to alter or amend them. So although the Administrative Code was adopted and enacted into law by Act No. 2657 effective upon the final day of July, 1916, and "the bill for a code occupies no different position than a bill for any other law, and it is common knowledge that many bills enacted by the legislature have in fact been prepared by person with no official status before it * * * nevertheless, there is much practical reason for denying the commissioners the power to affirmatively alter the law. For in spite of legislative care in examining the commissioners' proposal, it is inevitable that the legislature can not give the same detailed care to the consideration of a bill for a code that it can to an ordinary bill." (2 Sutherland, Statutory Construction, third edition, pp. 252, 253.)

And (4) this Supreme Court, in the case of *People vs. Caraballo* (62 Phil., 651), held that "Prior to January 1, 1932, the date when the Revised Penal Code took effect there was no law punishing the violation of a conditional pardon as a crime, the only law then in force being Act No. 1524 which merely provided for the enforcement of conditions made by the Governor-General in the exercise of his discretion in granting conditional pardons."

Even if the Revised Administrative Code had repealed Act No. 1524 and incorporated the provisions thereof in section 64 (i) of the Revised Administrative Code of 1917 as contended, the latter in so far as it refers to the enforcement of conditions made by the Chief Executive in the exercise of his discretion in granting conditional pardon, should be considered as repealed by section 159 of the Revised Penal Code because it is contrary or repugnant to the provisions of said section 159. For section 367 of the Revised Penal Code provides that "all laws and part of laws which are contrary to the provisions of this Code are hereby repealed." They are repugnant to each other and can not stand together, as a cursory comparison of their respective provisions will show:

(a) Under section 64 (i) of the Revised Administrative Code, a defendant who is charged with having violated his conditional pardon may be arrested and reincarcerated to serve the unexpired portion of the sentence by order of the Chief Executive, without notice or previous hearing for the determination whether the condition of the pardon has been violated by the defendant; while under section 159 of the Revised Penal Code such hearing or investigation of facts is necessary as part of due process of law. It is to be observed that the condition of a pardon may consist, not in that the defendant shall not violate any of the penal laws as in the present case, where a certified copy of the final judgment of defendant's conviction would generally be sufficient, without any further investigation, to show that the defendant has violated his conditional pardon, but in that the prisoner shall not be guilty of any misconduct as in the case of *U. S. vs. Ignacio* (33 Phil., 203), or of any infraction of the law punishable with a certain penalty as in the case of *U. S. vs. Villalon* (37 Phil., 325); or in any other, in which cases it would be necessary to make an investigation of the facts before the conditional pardon may be revoked.

(b) Under section 64 (i) of the Revised Administrative Code a person charged with violating his conditional pardon may be summarily arrested and recommitted to prison to serve the unexpired portion of the original sentence by order of the President, even though in fact he may not have violated the conditions of his pardon or has a good and valid defense, and the action of the Chief Executive is conclusive upon him and the courts have no jurisdiction or power to interfere with the action taken by the President of the Philippines in the exercise of his authority. While if the same person is prosecuted and convicted under article 159 of the Revised Penal Code for the same violation, the defendant may appeal from the judgment of conviction and be acquitted by the court of last resort.

(c) The penalties which must be imposed by the courts upon a defendant convicted of violation of conditional pardon under article 159 of the Revised Penal Code are to suffer (1) the unexpired portion of his original sentence if the penalty remitted by the granting of such pardon be higher or more than six years, or (2) the penalty *prisión correccional* in its minimum period, that is, from six months and one day to two years and four months, if the penalty remitted be less than six years, irrespective of whether the unserved sentence be one day or six years. (*People vs. Sanares*, 62 Phil., 826.) If article 159 of the Revised Penal Code "and the power vested in the President by section 64 (i) of the Revised Administrative Code to authorize the recommitment of a violator of a conditional pardon to serve the unexpired portion of his original sentence, can stand together and the proceeding under one provision does not necessarily exclude action under the other," as gratuitously held in the decision (we say gratuitously because it is not supported by any reason or authority), a person conditionally pardoned, may be administratively and judicially punished twice for one and the same violation of his conditional pardon. For example, if the penalty remitted by the conditional pardon be less than six years, the prisoner may, by order of the Chief Executive, be arrested and incarcerated to suffer the unexpired portion of his sentence under section 64 (i)

of the Revised Administrative Code; and, besides, he may be prosecuted and convicted by the courts to suffer prisión correccional in its minimum degree under section 159 of the Revised Penal Code. And if the penalty remitted by the granting of the conditional pardon be higher than six years, the person violating the pardon may be arrested and reincarcerated to serve the unexpired portion of his sentence by order of the President of the Philippines under section 64 (i) of the Revised Administrative Code; and besides he may also be prosecuted and convicted by the courts to suffer again the unremitted portion of his original sentence under section 159 of the Revised Penal Code.

The provisions of section 9 of Act No. 4103 creating the Board of Indeterminate Sentence to the effect that "nothing in this Act shall be construed to impair or interfere with the powers of the President as set forth in section sixty four (i) of the Revised Administrative Code," can not be construed to ratify a power not granted to the President by said section, or if granted already, withdrawn by section 159 of the Revised Penal Code, as above stated.

The contention of the respondent that "the legislature has intended the two legal provisions—article 159 of the Revised Penal Code and section 64 (i) of the Revised Administrative Code—to coexist as two alternative proceedings against those who violate the conditions of a conditional pardon, and the State may choose either, is not supported by the letter and spirit of those provisions and the rules of statutory construction as above shown. Besides it is against the public policy of not penalizing a defendant charged with the commission of an act which constitutes a public offense without a previous hearing, and also against common sense. Of course, it is but natural that the prosecution would not choose to prosecute a defendant under section 159 of the Revised Penal Code, if he can have the prisoner summarily recommitted to serve the unexpired portion of his original sentence by order of the Chief Executive under section 64 (v) of the Revised Administrative Code.

Wherefore, the petitioner's immediate release from custody is hereby ordered, without prejudice to his being prosecuted for violation of conditional pardon under section 159 of the Revised Penal Code. So ordered.

Petition denied.

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