

CATALINA ALBERCA Y BUSTILLO, PETITIONER AND APPELLANT VS. THE SUPERINTENDENT OF THE CORRECTIONAL INSTITUTION FOR WOMEN, RESPONDENT AND APPELLEE.

G. R. No. L-16896. January 31, 1964

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This case is before us on appeal (in forma pauperis) from the decision of the Court of First Instance of (Branch VI, Pasig), dismissing the petition for habeas corpus filed by appellant.

Appellant was charged with the offense of theft before the Municipal Court of Manila. The information was filed at 2:15 in the afternoon of April 8, 1957, alleging that the crime had been committed the previous day, April 7. The object stolen was a mechanical jack valued at P120.00 and belonging to one Vicente Lim. The information likewise charged that the accused was a habitual delinquent, having been previously convicted five times of the crime of theft by virtue of final judgments rendered by competent courts within a period of ten years from the date of her release or last conviction. The dates the various offenses were committed, the dates of the corresponding judgments, the penalties imposed and the dates of her release were all recited in the information. At 10 :00 o'clock in the evening of April 8, 1957 appellant was arraigned and upon her plea of guilty was sentenced to 6 months and 1 day of prision correccional and to an additional penalty of 10 years and 1 day of prision mayor for being a habitual delinquent. Thereupon she started serving sentence. On February 9, 1960 she filed the instant petition.

Appellant contends that her constitutional right to due process had been violated because (1) she was not given sufficient time to prepare for her defense; and (2) she was not represented by counsel.

Concerning the first ground, appellant relies on section 7 of Rule 114, to the effect that the defendant in a criminal case is entitled to at least two days to prepare for trial, and states that less than 48 hours had elapsed between the time of her arrest and the time she was arraigned and received the pronouncement of sentence. The rule, however, does not apply, for it refers only to a case where the defendant enters a plea of not guilty. A plea of guilty dispenses with the necessity of trial, and hence of such time as may be required to prepare for the defense.

As to the second ground, the presumption is that official duty has been regularly performed, and in appellant's case, that she was duly informed of her right to secure the services of counsel. There is nothing in the record before us to rebut this presumption. The right to counsel may be waived, as by a plea of guilty voluntarily given. It is not pretended here that the information was not duly read to appellant upon arraignment; nor is there any denial that she had committed the crime charged as well as the five other offenses of which she had been previously convicted and on which the allegation of habitual delinquency was based.

The case of *Johnson vs. Zerbst* (304 U.S. 458-469) cited by appellant is not in point. In that case the petitioner was accused of uttering and passing counterfeit currency. He pleaded not guilty and entered into trial. He requested the District Attorney that a counsel be appointed for him but the request was refused on a statutory ground, and when remanded to jail he was not permitted by the jailer to call for or contact a lawyer to handle the

defense. The District Court did not find that petitioner had waived his constitutional right of counsel. Under the circumstances, the United States Circuit Court of Appeals held that there was a violation of due process correctible by habeas corpus. In the case at bar not only did appellant enter a plea of guilty, but there is no showing that she requested the services of counsel or that she was not informed of her right to secure one during" the arraignment.

In the case of *Talavera vs. The Superintendent and Warden of the Correctional Institution for Women*, 67 Phil., 539, a petition for habeas corpus was filed on the ground, among others, that the petitioner had not been given the opportunity to utilize the services of a lawyer. The petition was dismissed both in the first instance and on appeal in spite of proof that she had not been informed of such right before arraignment. This Court stated that the denial thereof did not void the whole proceeding, being only an error of law, the remedy to correct which was by appeal from the decision and not by petition for habeas corpus.

The judgment appealed from is affirmed, without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon and Regala, JJ., concur.

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