

**DANILO BUSTAMANTE, PETITIONER, VS. HONORABLE JUDGE
MAXIMO MACEREN AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.***G.R. No. L-35101. November 24, 1972*

Ponente: FERNANDO, J.

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This suit for certiorari was filed with the avowed aim of correcting a judicial misstep presumably offensive to the constitutional right of petitioner not to be twice put in jeopardy of punishment for the same offense.[1] While directed against respondent Judge, the source of the alleged deviation from what is commanded by the fundamental law could be traced to his predecessor, Judge Jorge Coquia, now with the Court of First Instance of Manila, to whom was imputed the reopening of a case against petitioner after a judgment of conviction on a plea of guilty, the issuance of a commitment order, the start of and the actual service of the sentence by petitioner. It is only fair to add, however, that petitioner himself was partly responsible for giving a nudge that sent the hapless judge down the slippery slope of the imputed erratic conduct, there being a withdrawal by him of his plea of guilty after the provincial fiscal filed a motion for the modification of the penalty imposed. Nonetheless, with due recognition of that fact, the conclusion is still unavoidable that if there really were a failure to respect what is guaranteed petitioner by the Constitution, a grave jurisdictional defect was apparent when a judgment already actually executed with the petitioner confined in jail, would be reopened. It is thus commendable that the present Solicitor General, Estelito Mendoza, as is his wont, could discern the merit in petitioner's plea and would accede to his prayer. We agree and grant certiorari.

In the petition filed with this Court on August 9, 1972, there was set forth the information against petitioner, his plea of guilty upon arraignment on December 14, 1970, followed by a sentence of one-year imprisonment in view of the finding that there was incomplete self-defense taken in connection with three other mitigating circumstances, the commitment papers addressed to the Provincial Warden of Laguna on December 14, 1970, being signed the same day with the consequence of his immediate confinement then and there.[2] The above notwithstanding, so the petition did allege, there was a motion for modification of the penalty filed by the fiscal, with the petitioner also filing a motion for the withdrawal of the plea of guilty, to be followed by the then Judge Coquia signing the order of December 21, 1970 setting aside the judgment previously rendered.[3] After which, according to the petition, a trial was had and judgment promulgated on March 17, 1972 by now respondent Judge, convicting the petitioner to suffer the indeterminate penalty of six years and one day to twelve years and one day.[4] Then came that portion thereof to the effect that there was presented a motion for reconsideration premised on the plea that the accused had thereby been twice placed in jeopardy. Respondent Judge apparently, while not insensible to such a plea, was of the opinion that he lacked authority to nullify the order of Judge Coquia, which competence is lodged in a higher court.[5] As a result, this suit was filed, the prayer being for the nullification of the order of Judge Coquia reopening the case as well as the decision of March 17, 1972 by respondent Judge and his order denying the motion for reconsideration, with a plea for the immediate release of

petitioner, who in the meanwhile had finished serving the original one-year sentence imposed.

For greater clarity in the statement of facts, the recital thereof in the answer of Solicitor General Mendoza filed on September 14, 1972 is herein quoted: "a) The petitioner was accused of murder in an information filed with the Court of First Instance of Laguna, Branch II, docketed as Criminal Case No. SC-145 of said court; b) Upon arraignment on December 14, 1970, petitioner entered a plea of guilty, and after proving the privileged mitigating circumstance of incomplete self-defense and (3) ordinary mitigating circumstances, petitioner was sentenced by the trial court as follows: '[Wherefore], the Court finds the accused Danilo Bustamante guilty of the crime of murder as charged in the information. Considering in his favor the privileged mitigating circumstances of incomplete self-defense, plea of guilty, voluntary surrender and lack of intent to commit so grave a wrong, he is hereby sentenced to serve [one] (1) year imprisonment, to indemnify the heirs of the offended party in the amount of P12,000.00 and to pay the costs. The accused is entitled to the full benefit of preventive imprisonment he has so far served. [It is so ordered]' * * *; c) On the very same day, December 14, 1970, the judgment above-quoted was promulgated to the petitioner, who thereupon made an express waiver of his right to appeal * * *; d) Accordingly, the Hon. Judge Jorge Coquia, who rendered the aforesaid judgment, issued a commitment order dated December 14, 1970, addressed to the Provincial Warden of Laguna * * *, and the Provincial Warden, also on the same day, acknowledged receipt of the body of the petitioner, who forthwith started serving his sentence of imprisonment on that date * * *; e) Three days later or on December 17, 1970, the Provincial Fiscal of Laguna filed a Motion for Modification of Penalty * * *, and upon receipt of said motion, counsel for the petitioner on the same day filed a Motion for Withdrawal of Plea of Guilty and Waiver of Commitment * * *; f) On December 21, 1970, the Hon. Judge Jorge Coquia issued the following order: 'Submitted for resolution is the motion for modification of penalty filed by the Assistant Provincial Fiscal. On the other hand accused through counsel in view of the motion of the prosecution tiled a motion for withdrawal of plea of guilty and waiver of commitment. But in view of the motion of accused, the motion of the prosecution has become moot and academic and the motion filed by the accused is hereby granted and the judgment in this case dated December 14, 1970 is hereby set aside and the case shall be tried on the merit on January 18, 1970 at 8:30 A.M.' * * *; g) Subsequently, Judge Coquia was transferred to Manila, and the case against petitioner was reassigned to the sala presided over by the Honorable Maximo Maceren, before whom petitioner was rearraigned on February 1, 1971; and after petitioner entered a plea of not guilty, said Judge held a new hearing of the case on the merits and thereafter, Judge Maceren rendered a new judgment against petitioner on February 28, 1972, promulgated to the petitioner on March 17, 1972, the dispositive portion of which reads: '[Wherefore], premises considered, the accused Danilo Bustamante y Villanueva is hereby declared guilty beyond reasonable doubt of the crime of Homicide, and applying the provisions of the Indeterminate Sentence Law and considering the mitigating circumstance of voluntary surrender in his favor, he is hereby sentenced to suffer an indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum; to indemnify the heirs of the offended party in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency; and to pay the costs. Considering that the accused is now serving under preventive imprisonment, he shall be credited for the period of his preventive imprisonment pursuant to the provisions of Rep. Act 6127.' * * *; h) Petitioner filed a Motion for Reconsideration of the above decision on March 29, 1971, in which motion petitioner questioned the juris-diction of the trial court to try his case anew after he had fully served the judgment rendered by Judge Coquia against him on December 14, 1970. Petitioner, in said motion, argued that the judgment of December 14, 1970 against him had already become final when he started serving his sentence thereunder and that therefore, the Court thereafter lost jurisdiction over his case; and that no amount of waiver or consent on his part could bestow on said court jurisdiction that it had already lost. At the hearing of said motion, however, the respondent Judge Maximo Maceren took the position that he could not nullify an order of another judge of equal rank arid that only a higher court had the authority to nullify said order, but that he would hold his ruling on said

motion in abeyance until petitioner could file a petition for certiorari before the proper court; * * *"[6]

This is the petitory part of the Solicitor-General: "[Wherefore], in the light of the foregoing and in the interest of justice, undersigned counsel respectfully manifests that they offer no opposition to the issuance of the writ of certiorari prayed for in this case; and that it appearing that petitioner has been confined since December 14, 1970 up to the present, so that the period during which he has been imprisoned already exceeds the penalty meted out on him by the lower court in its judgment of December 14, 1970, undersigned counsel likewise offer no objection to his prayer in his petition that he now be released from custody, having already fully served his sentence under said judgment of the lower court of December 14, 1970."[7]

As noted at the outset, we are in agreement. Petitioner is entitled to the relief prayed for. With the judgment of conviction not only promulgated but actually carried out with petitioner having started to serve his sentence, no such order reopening the case should have been issued by Judge Coquia. That was not in accordance with the controlling doctrine on the constitutional right against being twice put in jeopardy. It is true that petitioner had in fact contributed to bringing about such a judicial deviation from the correct norm. That did not forfeit though, his right to a remedy to which he is entitled. There should not have been any approval of such a move. The Constitution does not countenance such a step. Nonetheless while observations partaking of a critical nature should not be stilled, they should be muted. What did transpire could have been due to sheer inadvertence caused by a crowded docket. Even if the order could be looked upon as resulting from the clarity of vision being dimmed or a diminution in one's grasp of authoritative precedents, such afflictions at times bother even the most diligent and conscientious occupants of the bench. At any rate, what cannot be denied is that petitioner, as mentioned at the outset, is entitled to his remedy.

1. For the undisputed facts speak for themselves. They do proclaim that petitioner has in his favor the protection afforded by the jeopardy clause. He was arraigned on a valid information before a competent court, and he pleaded guilty. What was more, the judgment was rendered. On the very same day, he was committed to jail and actually started serving sentence. There was no valid justification then for the order of Judge Coquia setting aside a decision already in the process of execution. That amounted to a defiance of a constitutional command. What the fundamental law states cannot be any clearer. No person, so it intones, "shall be twice put in jeopardy of punishment for the same offense." [8] Petitioner, as made clear in this suit for certiorari, was made precisely to suffer such a fate. What the Constitution condemns came to pass. This mandate as made clear in the recent decision of *Republic vs. Agoncillo* [9] is "a rule of finality. A single prosecution for any offense is all the law allows. It protects an accused from harassment, enables him to treat what had transpired as a closed chapter in his life, either to exult in his freedom or to be resigned to whatever penalty is imposed, and is a bar to unnecessary litigation, in itself time-consuming and expense-producing for the state as well." [10]

What is more, as it is equally beyond dispute that petitioner has served the full one-year period imposed in such valid judgment, he is entitled to be released as prayed for. Legally, as categorically announced in the leading case of *Gregorio vs. Director of Prisons*, [11] habeas corpus would lie. The facts in that case follow: "Alvaro Gregorio y Felipe was charged in the municipal court of the city of Manila with the crime of physical injuries through reckless imprudence. He was found guilty and was sentenced to one month and one day's imprisonment and to pay the cost. On appeal to the Court of First Instance of Manila, the accused was permitted to enter a plea of guilty to a charge of a misdemeanor, and, with the conformity of the assistant fiscal, was sentenced, on July 17, 1922, to pay a fine of P25 and the costs. On the same day, the accused paid into the office of the clerk of court a total of P44.72, covering the fine imposed and the costs. On the same day, also, the trial judge rescinded his decision and reassigned the case for a new trial. When the case was called, the defendant retired his plea of guilty and substituted therefor the plea of not guilty; the prosecution presented its evidence, but the defense refused to do

so. On July 31, 1922, the trial judge found the defendant guilty of the crime alleged in the information and condemned him to suffer one month and one day of arresto mayor, to indemnify Mrs. E. Christman in the amount of P55.20, and Mrs. Robert Cetti in the amount of P40, with subsidiary imprisonment in the case of insolvency, and to pay the costs of both instances. It was prior to the rendition of the judgment last mentioned that the writ of habeas corpus was prayed for in the Supreme Court."^[12] On the above, it was the conclusion of the Court as set forth in the opinion of Justice Malcolm: "As a general rule, where the defendant has executed or entered upon the execution of a valid sentence, the court cannot, even during the fifteen-day period, set it aside and render a new sentence. * * * To paraphrase the language of the United States Supreme Court in the case last cited, the petitioner having paid into court the fine of P25 imposed upon him, and that money having passed into the Treasury of the Philippine Islands, and beyond the legal control of the court, or of any one else but the Philippine Legislature, all under a valid judgment, can the court vacate that judgment entirely, and, without reference to what has been done under it, impose another punishment on the prisoner? To do so is to punish him twice for the same offense. He is not only put in jeopardy twice, but put to actual punishment twice for the same thing."^[13] Considering the lapse of time in this case and the actual service of the first sentence meted out, as much could be said of petitioner in this case.

2. Support for this result is likewise supplied by the pertinent provision of the Rules of Court. It reads thus: "A judgment of conviction may be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal."^[14] It used to be Section 7 of Rule 116. This provision, as noted by Justice Ozaeta, the ponente in *People vs. Quebral*,^[15] "is a restatement in statutory form of the doctrine laid down * * * in * * * *Gregorio vs. Director of Prisons*."^[16] In *De Leon vs. Rodriguez*,^[17] this Court, interpreting the above rule through Justice Bautista Angelo, stated: "From the above it appears that a judgment of conviction may only be modified or set aside before it has become final or appeal has been perfected, and a judgment becomes final after the lapse of the period of perfecting the appeal, or after the sentence has been partially or totally satisfied by the defendant. It appearing that the sentence imposed upon defendant has already become final because he has already begun serving the same on the very date of the promulgation of the judgment, it is evident that the case can no longer be reopened with a view to the modification of the sentence which is the purpose of the order of the court. Much as we sympathize with the move of the prosecution and the motive behind the order of the court in view of the apparent fraud the defendant has committed with regard to his age, the move cannot be entertained for it will place the accused in double jeopardy."^[18] It is to be noted that as in the petition before us, the defendant in this cited decision began serving his sentence on the same day judgment was promulgated.

It is not to be lost sight of that the above rule has been interpreted to mean that even this Court, after the finality of the judgment has been shown, is devoid of competence to modify, much less reverse the same. So it was announced in the above-cited *Quebral* decision. Thus: "Although the parties filed their respective briefs on the merits and raised no question as to the appealability of the sentence of the trial court, we cannot ignore our lack of jurisdiction to entertain this appeal. As stated by the trial court and concurred in by counsel de officio for the appellant in this court, the sentence against the accused had become final under section 7 of Rule 116 of the Rules of Court, inasmuch as the said accused had commenced to serve or extinguish it. * * * Needless to say, a final and executory judgment is not appealable and the appellate court has no jurisdiction to review, reverse, or modify it."^[19] There is this reiteration of the above principle by Justice Montemayor in the later case of *People vs. Sanchez*.^[20] As set forth in his opinion: "Moreover, under Section 7 of Rule 116, Rules of Court, a judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served or the defendant has expressly waived in writing his right to appeal. Under

the circum-stances, the sentence having become final, no court, not even this high Tribunal, can modify it even if erroneous, as claimed by the Solicitor General."^[21] It is only fair to add that such an approach is reflected in the exhaustive answer to the amended petition filed by the Solicitor General.^[22]

3. Nor did the Solicitor General, in the above answer, ignore the possible query that may be raised as to whether or not the withdrawal of the plea of guilty by petitioner could, in law, amount to a waiver. This is how the matter was treated: "True it is that under sec. 10, Rule 117 of the Revised Rules of Court, the defense of double jeopardy is waivable, and if not raised or set up at the proper time, is deemed waived, but the same rule provides that - 'If, however, the defendant learns after he has pleaded or has moved to quash on some other ground that the offense for which he is now charged is an offense for which he has been pardoned, or of which he has been convicted or acquitted or been in jeopardy, the court may in its discretion entertain at any time before judgment a motion to quash on the ground of such pardon, conviction, acquittal or jeopardy.' Considering that defense counsel raised the question of double jeopardy in favor of petitioner during the new trial and before Judge Maceren rendered judgment based on said new trial, it is believed that the above principle can be applied to this case by analogy and that said judge, in the exercise of his discretion, should have entertained said plea of double jeopardy in the interest of justice, especially since at the time such plea was made, petitioner had already fully served the one-year straight sentence imposed upon him by Judge Coquia on December 14, 1970, and was already entitled to be released from custody after such full service of his penalty under said judgment."^[23] Thus it would appear there is no legal bar to the remedy prayed for by petitioner.

4. There is thus implicit in the approach taken by the Solicitor General the thought that the rights assured an accused, while intended for his protection, being relieved of the apprehension that once indicted, conviction must automatically follow, are impressed with a larger end in view. Their presence in the Constitution attests to a belief, underlying our governmental system, that public interest is thereby promoted. It is of course desirable that crime should not go unpunished, but every one unfortunate enough to be proceeded against must be shown to be guilty thereof. What is more, the state as the dispenser of justice should not subject him to greater and other punishment than the law allows. For Justice Laurel, the constellation of constitutional rights which an accused is vouchsafed is "sacred" and not a mere "excrescence."^[24] There should be a "strict regard for [them]."^[25] That is the view of Cushman who could affirm: "There is no more accurate index of a nation's regard for civil liberty than is to be found in the laws and procedures by which it deals with persons accused of crime."^[26] Dumbauld would remind us that the importance of such restrictions on the power of government is to be found "not in the particular specific types of action prohibited, but in the general principle that keeps alive in the public mind the doctrine that governmental power is not unlimited."^[27] It is understandable therefore why law and policy unite in the conclusion that the petition should be granted.

WHEREFORE, the petition for certiorari is granted and the order of Judge Coquia of December 21, 1970 as well as the decision of respondent Judge Maceren of February 28, 1972 are hereby set aside and declared null and void, and petitioner, having fully served his valid sentence of December 14, 1970, is hereby ordered released forthwith. Without pronouncement as to costs.

Concepcion, C.J., Zaldivar, Castro, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Makalintal, J., is on official leave.

[1] According to Art. III, Sec. 1, par. 20 of the Constitution: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

[2] Amended Petition, pars. 1-4.

[3] Ibid, pars. 5-7.

[4] Ibid, par. 9.

[5] Ibid, pars. 10-12.

[6] Answer to Amended Petition, 1-4.

[7] Ibid, 9.

[8] Art. III, Sec. 1, par. 20 of the Constitution.

[9] L-27257, August 31, 1971, 40 SCRA 579.

[10] Ibid, 585.

[11] 43 Phil. 650 (1922).

[12] Ibid, 651-652.

[13] Ibid, 652-653. Justice Malcolm cited *United States vs. Hart*, 24 Phil. 578 (1913) and *United States vs. Vayson*, 27 Phil. 447 (1914). Cf. *U.S. vs. Samio*, 3 Phil. 691 (1904) and *United States vs. De Iro*, 33 Phil. 475 (1916).

[14] Rule 120, Section 7.

[15] 76 Phil. 294 (1946).

[16] Ibid, 296. Cf. *People vs. Tamayo*, 86 Phil. 209 (1950) and *People vs. Rodillas*, 89 Phil. 99 (1951).

[17] 107 Phil. 759 (1960).

[18] Ibid, 763. Cf. *People vs. Paet*, 100 Phil. 357 (1956) and *People vs. Mamatik*, 105 Phil. 479 (1959).

[19] 76 Phil. 294, 296 (1946).

[20] 101 Phil. 745 (1957).

[21] Ibid, 748.

[22] Answer to Amended Petition, 5-6. The Solicitor General was aided in the preparation thereof by Asst. Solicitor General Alicia V. Sempio-Diy and Solicitor Crescencia C. Salva.

[23] Ibid, 6-7.

[24] *Bermudez vs. Castillo*, 64 Phil. 483, 493 (1937).

[25] *People vs. Castaneda*, 63 Phil. 480, 485 (1936).

[26] *Civil Liberties in the United States*, 135 (1956).

[27] *The Bill of Rights* 140 (1957). Cf. Lawless, *The Machinery of Criminal Justice in England and the United States*, 21 *Syracuse Law Review* 1061-1093 (1970).

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