

NARCISCO ALVAREZ Y CORTES, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.*G.R. No. L-1809. January 23, 1948*

Ponente: FERIA, J.

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This is a petition for habeas corpus filed by the petitioner against the Director of Prisons on the ground that he is being illegally detained in the New Bilibid Prisons, notwithstanding the fact that the President of the Republic of the Philippines, through the recommendation of the Board of Indeterminate Sentence, granted the petitioner on December 23, 1946, absolute pardon of the crime of murder which he committed and of which he was convicted and sentenced to reclusion perpetua on June 5, 1945, by the Court of First Instance of Manila in criminal case No. 70022.

The Director of Prisons, in his return which, according to section 13, Rule 102, is considered prima facie evidence of the cause of the restraint, alleges that the petitioner, while serving the sentence of reclusion perpetua for the crime of murder above mentioned, escaped from prison on October 21, 1945, and for said evasion he was prosecuted and sentenced on March 22, 1946, by the Court of First Instance of Manila in case No. 73820, to three (3) years, six (6) months and twenty (20) days of prison correccional; that on April 8, 1946, the petitioner again escaped and evaded the service of the same sentence, and for the second evasion he was prosecuted and sentenced on August 20, 1946, to two (2) years, four (4) months and one (1) day of prison correccional in case No. 14862 by the Court of First Instance of Rizal; and that on May 24, 1946, the petitioner was prosecuted for illegal possession of firearm, convicted and sentenced by the Court of First Instance of Manila, in case No. 74312, to six (6) months of imprisonment, and to pay a fine of three hundred pesos (P300), with subsidiary imprisonment in case of insolvency.

Under the commitment orders issued by the respective Courts of First Instance in said cases Nos. 73820, 14862, and 74312, the petitioner is confined in the New Bilibid Prisons to serve a total of six (6) years, four (4) months and twenty-one (21) days of imprisonment, commencing with the date of his pardon of the crime of murder above mentioned.

The petitioner could have successfully set up the defense of double jeopardy in case No. 14683 of the Court of First Instance of Rizal, where he was prosecuted again for the first evasion of sentence of which he had already been convicted by the Court of First Instance of Manila in case No. 73820; but, petitioner did not set up said defense, and he was convicted on August 8, 1946, by the Court of First Instance of Rizal in case No. 14683 and sentenced to two (2) years, four (4) months and one (1) day of prison correccional. And petitioner could also have successfully alleged the same defense in case No. 74311 of the Court of First Instance of Manila, where he was prosecuted for the second time for the evasion of which the petitioner had already been convicted by the Court of First Instance of Rizal in case No. 14862; but the petitioner did not set up said defense, and he was convicted on May 16, 1946 by the Court of First Instance of Manila in Criminal Case No. 74311 and sentenced to two (2) years, four (4) months and one (1) day of prison correccional. As the petitioner has not yet completed the

service of the total penalty of six (6) years, four (4) months and twenty (20) days of imprisonment, to which he was sentenced in the cases Nos. 73820, 14862, and 74312, it is not necessary for us to decide now whether or not he has to serve also the sentences rendered in the above mentioned cases Nos. 14683 and 74311.

The penalties imposed upon the petitioner for evasions of service of sentence have not been affected by the absolute pardon granted to him remitting the unserved penalty to which he was finally sentenced for the crime of murder; because petitioner was convicted of evasions of service of sentence before the pardon and while he was serving said sentence of conviction for murder, which was then still in full force.

Petition is therefore denied. So ordered.

Moran, C.J., Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

CONCURRING AND DISSENTING OPINION

PARAS, J.:

Petitioner was convicted of murder and sentenced to reclusion perpetua on June 5, 1945, by the Court of First Instance of Manila. He did not appeal. His co-defendants, who had also been convicted, were acquitted on appeal. Upon recommendation of the Pardon Board, petitioner was granted an absolute pardon by the President on December 23, 1916. It appears, however, that prior to his pardon, petitioner twice escaped from jail and that, for each evasion of sentence, he was twice convicted, one by the Court of First Instance of Manila and another by the Court of First Instance of Rizal. In other words, for his first evasion, petitioner is to serve two separate penalties of his imprisonment, and for the second evasion another two separate penalties of imprisonment. In the present habeas corpus proceeding, petitioner contends that his absolute pardon should have the effect of erasing not only the sentence for murder but also the penalties for evasions thereof.

Petitioner's double conviction is certainly anomalous, and it is at once logical that two of the four sentences for evasions are void ab initio and should be so declared herein. If the Court of First Instance of Manila had jurisdiction over the offenses, its two judgments have to be served by petitioner. The latter should, however, be relieved from the two convictions rendered by the Court of First Instance of Rizal which, consequently, had no jurisdiction. If the two courts had concurrent jurisdiction, only the conviction for each evasion rendered by the court that first assumed jurisdiction should be upheld. Where one is restrained of his liberty by virtue of a judgment, the writ of habeas corpus lies if said judgment is absolutely void, because the court that rendered it had no jurisdiction. (Talabon vs. Iloilo Provincial Warden, 44 Off. Gaz., 4326.)

It appearing that petitioner has not as yet served at least two of the four sentences above referred to, the denial of his petition is still in order. I suspect that the President was not informed of petitioner's evasions of sentence; otherwise he would undoubtedly have either refused to grant any pardon or included therein the penalties for said evasions. Evidently, petitioner's remedy is to bring the matter to the attention of the President with a view to obtaining further executive clemency.

CONCURRING AND DISSENTING OPINION

PERFECTO, J.:

We concur in the decision of denial, but we have to write this opinion to make clear our position as regards the double sentences rendered against petitioner for each of the two evasions of sentence for which he was prosecuted in the Court of First Instance of Manila and in the Court of First Instance of Rizal.

We do not agree with the majority's refusal to decide the question whether or not petitioner should serve the second sentence in the two cases. They are null and should, not be served as if they have not been rendered. There is no dispute that for the first evasion of sentence he was convicted in two separate criminal proceedings in two different Courts of First Instance and, accordingly, made to suffer two separate penalties. The same thing happened with his second evasion of sentence. It is obvious that the two second sentences are null and void. They are violative of the law, because the law forbids double or multiple prosecutions for the same offense and does not authorize double or multiple punishments for the same violation. The Constitution expressly provides that "no person shall be twice put in jeopardy of punishment for the same offense." (Article 3, section 1, Item 20.) Our duty is to enforce the Constitution and the laws, and not to keep silent in the face of violations staring at us in an official record under our consideration.

No action or omission on our part should open the doors to any doubt that we shall never countenance any illegality or anything contravening the Constitution.

The way the double sentences were rendered was so unusual as to merit official investigation. As the situation may give rise to the belief that petitioner is the victim of official persecution, things must be clarified, so that punishment may be meted out to the guilty person if there is any. At any rate, measures should be taken so as to avoid the gross miscarriage of justice evidenced by the two double sentences.

How did it happen that two distinct criminal prosecutions were instituted against petitioner for each one of two offenses? If they were committed under the jurisdiction of one court, how was the other court able to exercise jurisdiction over the same offense? Were the prosecuting officials in one court the same prosecuting officials in the other court? If they were not, were the prosecuting officials in the second cases aware of the first cases? Who was responsible for the moves to secure double convictions against petitioner? If the second prosecution and conviction for the first offense were due to mistake committed in good faith, why was the mistake repeated with regard to the second offense?

These are some of the questions that should be answered. The situation confronting us regarding the two double convictions should awaken and irritate all those who know how our system of justice should function and operate and how that system should deserve the faith and respect of the people. The travesty of justice bared by the two double convictions not only requires correction but imposes upon all officials concerned the imperative duty to take effective measures to avoid its repetition. The present is bound to the future by the uninterrupted chain of destiny. If the broken links of today are not repaired, they are likely to cause disaster in the future. The reasoning power which nature has endowed upon us advises that our actions and omissions of today necessarily have to project to the future. Our duties are not only for the present but for the morrow. Let us not allow the errors of the present go uncorrected if we have to live up to our responsibility before the days that are to come.

RESOLUTION ON A MOTION FOR RECONSIDERATION

March 19, 1948

FERIA, J.:

This is a motion for reconsideration of our decision denying the petitioner's petition for habeas corpus on the ground that, although the petitioner had been granted pardon by the Chief Executive which remitted the penalty imposed upon the petitioner in a sentence rendered by the court for the crime of murder of which he was convicted, such pardon did not affect or carry with it the remission of the penalty imposed upon him for the offense of evasion of service of said sentence committed prior to said pardon.

The argument in support of the motion for reconsideration is predicated upon the proposition that the offense of evasion of service of sentence committed by the petitioner, is not independent from but dependent upon the sentence or penalty imposed upon him for the crime of murder for the evasion of which sentence the petitioner was also convicted. In support of his contention, petitioner quotes our decision in *People vs. Jose* (42 Off. Gaz., 697) in which we held that the offense or violation of conditional pardon is not a substantive offense or independent from the crime for the commission of which the punishment imposed upon him was remitted by the pardon.

This proposition or contention is untenable, for there is no parity not even analogy between evasion of service of sentence and violation of conditional pardon.

Evasion of service of sentence or "jail breaking" is an offense defined and penalized as a crime in this jurisdiction by article 157 of the Revised Penal Code, and is also punished as such in practically all jurisdictions even those under the common law; because it is an attempt at least to evade penalty inflicted by the courts upon criminals and thus defeat the purpose of the law of either reforming or punishing them for having disturbed the public order. While violation of a conditional pardon is a mere infringement of the terms stipulated in a contract between the sovereign power or the Chief Executive and the criminal, to the effect that the former will release the latter subject to the condition that if he does not comply with them, he will be recommitted to prison and serve the unexpired portion of his original sentence if higher than six years, or prison correccional in its minimum period if less than six years.

In the case of *U. S. vs. Ignacio* (33 Phil., 202, 204), it was held that "the defendant accepted the conditional pardon and thereby secured his release from imprisonment. Having accepted the conditional pardon, he is bound by its terms. The record shows that he has been guilty of misconduct after his conditional pardon. By such misconduct, he forfeited his pardon and his right to liberty thereunder. When a pardoned person violates the conditions of his pardon, he is left in the exact situation in which he was when the pardon was granted, and the original sentence may be enforced against him. (Ex parte Wells, 18 Howard [U. S.], 307; Ex parte Hawkins, 61 Ark., 321; 30 L. R. A., 736; 54 Am. St. Rep., 209; Kennedy's Case, 135 Mass., 48; Ex parte Marks, 64 Cal., 29.)"

Violation of conditional pardon is not a public offense in the strict sense of the word, for it does not cause harm or injury to the right of other person nor does it disturb the public order; and if it does cause any harm it is to the violator himself who, for not complying with the conditions of the pardon, has to serve again the unexpired portion of the penalty imposed upon him for the commission of the offense which was conditionally remitted or pardoned. While the evasion of service of sentence is a public offense or a wrongful act separate and independent from any other, and it is not righted or effaced by the pardon or remission of the penalty imposed in the sentence against the accused for the crime, the service of which the culprit tried to evade before the pardon.

The penalty for the crime of murder is different and independent from that for evasion of service of sentence, and therefore the evader of service of sentence must continue serving the punitive sentence rendered against him for the offense of evasion, irrespective of the pardon or remission or the penalty for murder. While the punishment for violation of conditional pardon is the unexpired portion of the penalty for the original offense of which the

conditional pardon has been granted. So where the punitive sentence for the offense for which a prisoner has been pardoned is no longer good or valid and cannot be enforced, as in the case of *People vs. Jose*, supra, the defendant should be released for he can not be criminally prosecuted and convicted for violation of the conditional pardon, because no punishment can be imposed upon him therefor since there is no unexpired portion of the penalty to be served in more or less modified term.

Motion for reconsideration is therefore denied.

Moran, C.J., Paras, Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

DISSENTING OPINION

PERFECTO, J.:

We vote to grant the motion for reconsideration in order that the two illegal judgments for evasion of service of sentence be declared null and void.

The reasons for this stand were already expressed in our opinion when the decision of this case was promulgated.

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