

LEONCIO ROSARES, PETITIONER, VS. DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-3463. March 06, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In his first petition for habeas corpus against the Director of Prisons, filed in this Court on November 14, 1948, Leoncio Rosares alleged that his maximum term of imprisonment was six (6) years. On that basis, computing his period of imprisonment already served, including preventive imprisonment as well as the period allowed for good conduct, it was found that he had yet to serve the subsidiary imprisonment provided by law because of non-payment of the indemnity of P2,000, which formed part of his sentence in a decision of the Court of First Instance of Leyte finding him guilty of homicide. For that reason his petition was denied in a resolution dated November 17, 1949.

The petitioner has now filed a second petition on February 9, 1950, asking for a reconsideration of our resolution, alleging that his true maximum imprisonment was six (6) years and one (1) day and not only six (6) years as erroneously alleged in his first petition. This addition of one day to the period of imprisonment raises the prison sentence from prision correccional to prision mayor and places the case within the terms of Art. 39, par. 3 of the Revised Penal Code which provides that when the principal penalty imposed is higher than prision correccional no subsidiary imprisonment shall be imposed upon the culprit. The record shows that without this subsidiary imprisonment petitioner has already served his sentence, in fact, with a little excess. The Solicitor General who represents the respondent Director of Prisons after conducting the necessary investigation makes the same finding and recommends that petitioner be now released.

In view of the foregoing considerations, the resolution of November 17, 1949, is hereby set aside; the second petition is granted and petitioner Leoncio Rosares is ordered released, unless, there be any other lawful cause for his further detention. No costs.

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

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