

TEODORO GABOR Y ORO, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-4129. November 14, 1950

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for habeas corpus filed by Teodoro Gabor y Oro, who alleges therein, among others, the following:

That on December 2, 1940, he was convicted by the Court of First Instance of Maasin, Leyte, in Criminal Case No. 5268:

(a) For homicide; From 2 years, 4 months and 1 day of prison correccional, to 8 years and 1 day of prison mayor, to pay an indemnity of P2,000, with subsidiary imprisonment in case of insolvency, and costs.

(b) For frustrated parricide: 8 years of prison mayor, to accessories of the law, and costs.

That he began to serve his sentence on December 2, 1940, and was granted a reduction of one-fifth of his sentence for loyalty.

That "taking into account the maximum good conduct time allowances, and other credits, to which the petitioner is entitled under Acts Nos. 2489 and 3815, he has fully and completely served out his principal penalties in the two criminal cases in which he had been convicted with only the subsidiary, imprisonment corresponding to the indemnity of P2,000, which the petitioner is unable to satisfy in kind, remaining to be served."

That he is being illegally and unlawfully restrained, imprisoned and deprived of liberty by the respondent; and the illegality and nullity of the petitioner's present confinement lies in the fact that he is being held and detained to serve the subsidiary imprisonment imposed upon him with the principal penalty in the homicide case, such imposition being contrary to law and so imposed with grave abuse of discretion and without jurisdiction on the part of the Honorable Trial Court, inasmuch as Section 3, Article 39, of the Revised Penal Code, expressly provides 'When the principal penalty imposed is higher than prison correccional, no subsidiary imprisonment shall be imposed upon the culprit.' "

The respondent in his return, which must be considered as prima facie evidence according to section 13, Rule 102, Rules of Court, evidence not contradicted by the petitioner, shows the following:

That by excluding the subsidiary imprisonment, the petitioner is subject to the following penal sentence:

(a) For the homicide:

A minimum of 2 years, 4 months and 1 day and a maximum of 8 years and 1 day.

(b) For the frustrated parricide:

A definite sentence of 8 years.

- That by authority of the Japanese Commander in Chief in Palawan (Annex 3 hereto attached), the Superintendent of the Iwahig Penal Colony on June 4, 1942, reduced by one-fifth the sentences imposed on the petitioner (Annexes 4-A, hereto attached) and said sentences as reduced became as follows:

(a) For the Homicide:

Minimum—1 year, 10 months and 13 days

Maximum—6 year, 4 months and 25 days

(b) For the frustrated Homicide:

Definite—6 years, 4 months and 24 days

That with good conduct time allowance his minimum sentence expired on December 2, 1942, his maximum expired on April 26, 1947, and both his minimum and definite sentence will expire on January 20, 1953.

And that conceding further time allowance to the petitioner by reason of his having qualified as a trusty or penal colonist beginning October 15, 1943, it results that on said date he had already served his minimum sentence, and his maximum sentence expired on December 5, 1946, and both his maximum and definite sentences will expire on February 17, 1952.

The petitioner takes it for granted that the reduction of one-fifth of his sentence for loyalty was made in accordance with law, and contends that the sentence he is now serving is for subsidiary imprisonment, which is null and void, according to the petitioner; because the principal penalty imposed by the court in the case for homicide is prison mayor which is higher than prison correccional, and Sec. 3, Article 57, of the Revised Penal Code, provides that "when the principal penalty imposed is higher than prison correccional no subsidiary imprisonment shall be imposed upon the culprit."

On the other hand the respondent admits that the subsidiary penalty imposed upon the petitioner in the above mentioned case is null and void, and for that reason the petitioner has not been made to serve said penalty; but contends that the reduction of one fifth of the petitioner's sentence by the Superintendent of the Iwahig Penal Colony on June 4, 1942, is null and void. Because the reduction was made not in accordance with the provisions of Articles 98, 99 and 158 of the Revised Penal Code, but under the authority given by the Japanese Commander-in-Chief in Palawan to said Superintendent to grant pardon, parole or reduction of the inmates' sentences who have shown excellent conduct of loyalty and devotion to duty. And, the respondent argues that the Japanese Commander-in-Chief of the Japanese forces in Palawan had no power to authorize the Superintendent of the Iwahig Penal Colony to make such reduction because a military occupant is enjoined to respect the municipal laws prevailing in the occupied territory.

The authority granted upon the Superintendent of the Iwahig Penal Colony by the Commander-in-Chief of the Imperial Japanese landing forces in Palawan, did not repeal or modify Articles 98, 99 and 158 of the Revised Penal Code, because it was applicable only to the inmates of said colony. It was rather a delegation to the Superintendent of the power or authority to pardon or parole, since reduction of a prisoner's sentence is a partial pardon. The question in issue in the present case is whether the Commander-in-Chief of the Imperial landing forces in Palawan had power to pardon the petitioner's sentence imposed by the civil courts of the Philippine Government in that penal colony.

We have already ruled in the cases of *Sameth vs. Director of Prisons*, (43 Of. Gaz. pp. 146, 150; 76 Phil., 613); *Caraos vs. Daza* (43 Off. Gaz., p. 462; 76 Phil., 681), and *Botuyan, vs. The Director of Prisons*, G.R. No. L-2240, promulgated June 26, 1948, that the only competent authorities having the power to pardon during the Japanese occupation, were the Commander-in-Chief of the Imperial Japanese military forces and the President of the

so-called Republic of the Philippines, and consequently the Commander-in-Chief of the 'landing Japanese forces in Palawan had no power to authorize the pardon or reduction of the sentence of the petitioner.

In view of the foregoing, the petition for habeas corpus is denied. So ordered.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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