

EDUARDO GOMEZ, Petitioner, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-879. October 02, 1946

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for a writ of habeas corpus with the Director of Prisons as respondent. The petitioner is Eduardo Gomez, who has filed the petition in behalf of Eliseo Gomez, at present confined in the new Bilibid Prison, in the municipality of Muntinlupa, Province of Rizal, as a detention prisoner.

The petition and the return of the writ disclose that Eliseo Gomez was committed to the new Bilibid Prison on May 27, 1944, by the Court of First Instance of Manila, by virtue of a judgment of conviction for rape, sentencing him to suffer an indeterminate penalty of from 6 years and (1) day of prison mayor to (14) years and (8) months of reclusion temporal, to pay the offended party P500 as indemnity, and to pay the costs. The commitment, addressed to the Director of Prisons, was signed by Judge Buenaventura Ocampo, of the Court of First Instance of Manila.

Certified copy thereof is attached to as part of the return.

The prisoner appealed, to the Court of Appeals in due time but before the case disposed of, the record was completely destroyed or lost.

Section 4 Rule 102, of the Rules of Court provides that "If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge, or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the "writ shall not be allowed; * * *. Nor shall anything in this rule be held to authorize the discharge * * * of a person suffering imprisonment under lawful judgment."

The petition does not make out a case. The Director of Prisons is holding the prisoner under process issued by a competent court, in pursuance of a lawful, subsisting judgment. The prisoner himself admits the legality of his detention. The mere loss or destruction of the record of the case does not invalidate the judgment or the commitment, or authorize the prisoner's release.

The prisoner's remedy, for the time being at least, lies in having the record of his case, reconstituted. Steps in this direction have already been started; the record is in process of reconstitution before a commissioner. If the proceeding has been suspended, it was on motion of the prisoner's attorney for extension of time.

The delay which the prisoner's case suffers has been due to circumstances beyond the control of the officials in charge of the prosecution. This delay we have to consider as reasonable and is not a good ground for the granting of the petition.

We agree with the Solicitor General that at best the petition is premature. The petitioner should have waited for the result of the efforts being exerted to reconstitute the record. Should reconstitution or new trial turn out to be

impracticable, then that will be the time when appropriate action may be taken to do justice within the law to the prisoner.

The petition is denied without costs.

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

HILADO, J., with whom concurs PERFECTO J., dissenting:

I dissent on the ground that, in my opinion, the judgment of conviction rendered in 1944 by the Japanese-sponsored Court of First Instance of Manila against petitioner is null and void. My reasons are (1) those set forth in my dissent, both from the main decision and from the resolution on the motion for reconsideration, in *Co Kim Cham vs. Valdez Tan Keh, and Dizon* (75 Phil., 113, 371); (2) those set forth in my concurring opinion in *Peralta vs. Director of Prisons*, (75 Phil., 285); (3) those set forth in my concurring opinion in *People vs. Jose* (75 Phil. 612); (4) those set forth in my dissent in *Alcantara vs. Director of Prisons*, (75 Phil., 494); (5) those set forth in my concurring opinion in *De Castro vs. Court of Appeals* (75 Phil., 824) and (6) the doctrine in *Jones vs. United States* (137 U. S. 202; 34 Law ed. 691, 696) and in the cases therein cited, that:

"Who is the sovereign, de jure or de facto, of a territory is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects, of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances. (*Gelston vs. Hoyt*, 16 U. S. 3 Wheat, 246, 324 [4:381; 401]; *United States vs. Palmer, Id.*, 610 [471]; *the Divina Pastora*, 17 U. S. 4 Wheat., 52 [4:512]; *Foster vs. Neilson*, 27 U. S. 2 Pet., 253, 307, 309 [7:415, 433, 434]; *Keene vs. M'Donough*, 33 U. S. 8 Pet., 308 [8:95]; *Garcia vs. Lee*, 37 U. S., 12 Pet. 511, 520 [9::1176]; *Williams vs. Suffolk Ins. Co.* 38 U. S. 13 Pet., 415 [10:226]; *United States vs. Yorba*, 68 U. S. 1 Wall., 412; 423 [17:635, 637]; *United States vs. Lynde*, 78 U. S. 11 Wall., 632, 638 [20:230, 232]. It is equally well settled in England. *The Pelican*, Edw. Adm. Appx. D; *Taylor vs. Barclay*, 2 Sim. 213; *Emperor of Austria vs. Day*, 3 DeG. F. & J., 217, 221, 233; *Republic of Peru vs. Peruvian Guano Co., L. R.*, 36 Ch. Div. 489, 497; *Republlc of Peru vs. Dreyfus, L. R.*, 38 Ch. Div. 348, 356, 359) (137 U. S., 213, 34 Law ed., 696).

Finally, this dissent is also based on the considerations stated in my dissenting opinion in *Ibañez vs. Hernandez* (775, post.)

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