

**HANS J. SAMETH, PETITIONER, VS. DIRECTOR OF PRISONS,
RESPONDENT.***G.R. No. L-351. April 30, 1946*

Ponente: DE JOYA, J.

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On March 7, 1946, petitioner Hans J. Sameth filed a petition for habeas corpus in this Court, alleging that he is a Czechoslovakian citizen, unlawfully imprisoned and restrained of his liberty by the respondent, in the New Bilibid Prisons, in Muntinglupa, Province of Rizal; that said imprisonment and restraint of liberty are illegal, and that the illegality consists in that:

On June 12, 1945, he was apprehended and detained by the U.S. Army authorities, through its Counter Intelligence Corps (CIC), on charges of collaboration; that on October 25, 1945, he was turned over to the Government of the Commonwealth of the Philippines, by which he continues to be detained to this day; that on November 10, 1945, he filed before the People's Court a petition for provisional release under bail, which was denied; that on February 1, 1946, he filed a petition for reconsideration, at the hearing of which, the special prosecutors stated that there were no criminal charges against him, except one for allegedly impersonating a United States Army officer, but the People's Court, nevertheless, refused to act on the matter, on the ground of lack of jurisdiction, as a consequence of which ruling, he continues to be detained in the New Bilibid Prisons, although no complaint or information has been filed against him, and notwithstanding the provisions of Article 125 of the Revised Penal Code; and that being a foreigner, he cannot be prosecuted for treason, under existing legislation in the Philippines.

On March 30, 1946, the respondent filed his answer, alleging that, according to his certificate of citizenship, dated September 28, 1926, petitioner is a citizen of Austria; that petitioner was apprehended and detained on June 9, 1945, by direction of the Commanding Officer, 43d CIC Detachment, United States Army, upon charges of collaboration with the enemy and of impersonating a United States Army officer, by wearing the insignia and uniform of a second lieutenant of the Corps of Engineers, United States Army; that the subsequent investigation of petitioner has disclosed that, during the Japanese occupation of the Philippines, he was an agent in the buy-and-sell business, dealing in all types of supplies; that said arrest and detention of petitioner were valid and legal, and that his subsequent detention, upon the transfer of his person to the Commonwealth Government by the United States Army, was a mere logical sequence of his previous commitment and, therefore also valid and legal; that, although, petitioner is a foreigner and hence not chargeable with treason against the Commonwealth of the Philippines, petitioner was convicted on February 17, 1944, and sentenced to imprisonment by the Court of First Instance of Manila, on three (3) charges of estafa, and committed to the New Bilibid Prisons, on March 18, 1944, which sentence he was serving until February 5, 1945, when he was released upon a verbal order of the Japanese detachment commander in the New Bilibid Prisons, before said detachment retreated, upon the approach of the United States Army and the Philippine Guerrilla Forces; that said verbal order was null and void, and did not efface, remit nor terminate the punitive sentence meted out to petitioner; that considering the validity of the

aforementioned judgment of conviction, herein petitioner is subject to detention and imprisonment for the unexpired portion of his sentence, namely, for an additional period of one (1) year, one (1) month and six (6) days; that even if petitioner should be credited with the entire period of his detention and confinement by the Commonwealth of the Philippines, from the date his person was transferred to the same by the United States Army, to wit, from October 25, 1945, to March 30, 1946, or a period of five (5) months and five (5) days, petitioner would still be bound to serve his unexpired sentence, to wit, eight (8) months and one (1) day, which, together with the above stated period of five (5) months and five (5) days, would complete the portion of his sentence remaining unserved on February 5, 1945, when he was illegally released; and that all the documents and papers, in connection with the charge against the petitioner, for impersonating a United States Army officer, had been endorsed and forwarded to the Office of the City Fiscal of Manila, for the filing of the corresponding information.

From the facts stated above, it is evident that the judgment of conviction rendered against herein petitioner, in each of the three (3) cases, for estafa, filed against him, in the Court of First Instance for the City of Manila, during the Japanese occupation of the Philippines, was legal and valid, having been rendered and pronounced by a competent court duly organized under the de facto government established in this country, under the Japanese Army of occupation. (*Co Kim Cham vs. Valdez Tan Keh and Dizon*, 75 Phil., 113.)

And the only question that remains to be decided, is the validity of the alleged pardon granted verbally to herein petitioner, on February 5, 1945, by the Japanese detachment commander in the New Bilibid Prisons, in Muntinglupa, Province of Rizal.

If the alleged pardon had been granted by the President of the so-called Philippine Republic, or by the Commander-in-Chief of the Japanese Imperial Forces, while they still had effective and exclusive control and authority over the Philippines, and particularly over the city of Manila and the province of Rizal, there could be no question as to the legality or validity of the pardon so granted; because the authority of the military occupant over the territory under his effective and exclusive control is supreme. (Hague Convention, 1907, Laws and Customs of War on Land, Art. 42; Wilson, *International Law*, 3rd Ed., 1939, pp. 307- 308; Wheaton, *International Law*, 7th Ed., 1944, Vol. II, War, pp. 232-233); Hyde, *International law*, 2nd Ed., 1945, Vol. III, p. 1881).

The court takes judicial notice of the fact that on February 5, 1945, the seat of the government of the so-called Philippine Republic had been transferred to the city of Baguio, and that the Commander-in-Chief of the Japanese Imperial Forces had likewise left the city of Manila; and that the Japanese Imperial Forces no longer had effective control over the city of Manila and the province of Rizal, as they had been retreating to the mountains, pursued by the United States Army and the Philippine Guerrilla Forces; and, consequently, with the loss of effective control over the city of Manila and the province of Rizal, the authority of the enemy forces of occupation had ipso facto ceased. And any order given or issued under the circumstances, by the President of the so-called Philippine Republic, or by the Commander-in-Chief of the Japanese Imperial Forces, on February 5, 1945, would be null and void. (Wilson, *idem.*, p. 316; Wheaton, *idem.*, pp. 232-233; Hyde, *Idem.*, Vol. III, p. 1881.) A fortiori, any verbal order for the pardon or release of herein petitioner, allegedly given or issued on February 5, 1945, by the Japanese detachment commander in the New Bilibid Prison Muntinglupa, Province of Rizal, before abandoning the said place, to avoid annihilation or capture by the approaching United States Army and the Philippine Guerrilla Forces, was absolutely null and void and of no legal force and effect whatsoever. Hence, herein petitioner must serve the unexpired portion of the sentence imposed upon him in the three (3) estafa cases mentioned above, after giving him credit for his detention, under the authority of the Government of the Commonwealth of the Philippines, after he had been turned over thereto, by the United States Army, on October 25, 1945.

And the right of the United States Army authorities to order the arrest and detention of herein petitioner is

unquestionable.

Wherefore, the petition for habeas corpus, filed in this case, should be denied and dismissed, with costs. So ordered.

Moran, C.J., Jaranilla, Pablo, and Bengzon, JJ., concur.

FERIA, J., concurring and dissenting:

This is a petition for habeas corpus filed by the petitioner on the ground that he is being illegally detained by the respondent Director of Prisons.

The respondent in his answer or return, paragraph IV, states that although the petitioner is a foreigner, he "was convicted on February 17, 1944, sentenced to imprisonment by the Court of First Instance of Manila on three (3) charges of estafa and committed to New Bilibid Prisons on 18 March 1944, which sentences he was duly serving until 5 February 1945, when he was released upon a verbal order of the Japanese Detachment Commander in the New Bilibid Prisons in Muntinglupa, Rizal, before said detachment retreated therefrom upon the approach of the United States Army and Philippine Guerrilla Forces." This return is considered prima facie evidence of the cause of restraint according to Sec. 13, Rule 102, of the Rules of Courts.

The petitioner having been convicted on three charges by the Court of First Instance of Manila of the crime of estafa penalized by the Revised Penal Code, the punitive sentence rendered by said court is not of a political complexion, and therefore valid even after the restoration of the Commonwealth Government.

This petition for habeas corpus can not be granted on the ground that the petitioner was pardoned by the competent authorities, because there is nothing in the record to show that the petitioner was released by virtue of a pardon duly granted, either by the President of the so-called Republic of the Philippines established by the military occupant, or by the Commander-in-Chief of the Imperial Japanese Military Forces in the Philippines, who were the only competent authorities having the power to pardon the petitioner under the constitution of the so-called Republic of the Philippines, and the rules of international law. The verbal order of release given by the Japanese detachment commander in the New Bilibid Prisons in Muntinglupa, Province of Rizal, can not have the effect of a pardon and remit the unexpired portion of the penalty imposed upon him in said sentence.

It is of judicial notice that on February 5, 1945, only the part of the City of Manila situated in the north of Pasig River was reoccupied or liberated by the American and Filipino forces, and that the southern portion of the City as well as Muntinglupa, Rizal, where the New Bilibid Prison was located, remained in the possession of the Japanese forces until the later part of said month of February. By the fact that the Commander-in-Chief of the Imperial Japanese Forces had transferred his headquarters outside of Manila, and the seat of the government of the so-called Republic of the Philippines had been transferred to Baguio before that date, the effective control over the City of Manila and the province of Rizal was not lost by the military occupant, nor did the authority of the military forces of occupation therein cease ipso facto.

This Court in its resolution, promulgated on November 16, 1945, denying the motion for reconsideration of the decision in the case of *Co Kim Cham v. Valdez Tan Keh and Dizon* (75 Phil., 371), held among others the following:

" 'According to the rules of Land Warfare of the United States Army, belligerent or so-called military occupation is a question of fact. It presupposes a hostile invasion as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader is in position to substitute and has substituted his own authority for that of the legitimate government of the territory invaded."

(International Law Chiefly as Interpreted and Applied by the United States, by Hyde, Vol. II, pp. 361-362) 'Belligerent occupation must be both actual and effective. Organized resistance must be overcome and the forces in possession must have taken measures to establish law and order. It doubtless suffices if the occupying army can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district.' (Id., p. 364) "Occupation once acquired must be maintained.... It does not cease, however,.... Nor does the existence of a rebellion or the operations of guerrilla bands cause it to cease, unless the legitimate government is reestablished and the occupant fails promptly to suppress such rebellion or guerrilla operations.' " (Id. p. 365).

The petition for habeas corpus should therefore be denied with costs against the petitioner.

PARAS, J., with whom concur OZAETA and HILADO, JJ., dissenting:

My vote is to grant the writ of habeas corpus and to order the immediate release of the petitioner.

The latter was sentenced by virtue of final judgments, for three separate offenses of estafa, to suffer the following prison terms: In the first case, 6 months plus 2 months of subsidiary imprisonment; in the second case, 2 months and 1 day plus 20 days of subsidiary imprisonment; in the third case, from 2 months and 1 day to 1 year and 1 day, plus 4 months of subsidiary imprisonment. According to petitioner's prison record (Exhibit "B"), the date of expiration of his total minimum sentence is January 16, 1945.

The petitioner was committed to the New Bilibid Prisons in Muntinlupa on March 18, 1944, where he remained in confinement until February 5, 1945, on which date he was released by order of the Commander-in-Chief of the Imperial Japanese Forces in the Philippines upon recommendation of the Director of Prisons. On June 12, 1945, he was, however, arrested and detained by the United States military authorities who, on October 25, 1945, recommitted him to the New Bilibid Prisons.

Taking into account petitioner's detention by the military authorities, his total period of confinement, up to the present, will be some twenty (20) months. Otherwise, it will be only sixteen (16) months. In accordance with the rules and regulations, then and now existing, every prisoner is entitled, for good conduct, to an allowance of five (5) days monthly. In such case (there being no pretense to the contrary), the petitioner had already earned eighty (80) days which should be deducted from his total prison term.

By simple mathematical process, it is clear that, crediting the petitioner with the period of his detention by the military authorities (from June 12, 1945 to October 25, 1945), he has already exceeded his sentence in the three cases heretofore mentioned. The excess would be greater if the basis of our computation is the minimum period of two (2) months and one (1) day imposed in the third case.

Wherefore, on the ground that the petitioner has fully satisfied the penalties meted out to him in the three cases, the present petition ought to prosper. If the petitioner is in fact an undesirable alien or had committed any other offense punishable under our laws, he should be ordered deported or prosecuted accordingly.

BRIONES, J.:

Estoy conforme con la disidencia preinserta del Magistrado Sr. Paras. Establecer una diferencia entre la reclusion del recurrente en la penitenciaría bajo mandamiento de las autoridades del Ejército Americano y su reclusion bajo la jurisdicción del Gobierno del Commonwealth es, creo yo, extremar el tecnicismo, violentar demasiado la sutileza dialéctica. El hecho indisputable es que sumado todo el tiempo de su reclusion cubre con creces el periodo total de su sentencia. Es tanto más justificada esta interpretación liberal cuanto que la reclusion del

recurrente bajo el Ejercito no sirvio practicamente ningun proposito, pues no se ha formulado ninguna querella contra el recurrente con motivo de la accion de los militares.

PERFECTO, J., dissenting:

We believe that this case may be decided either according to the majority or the minority opinion in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113), and in either one the result must and will be the same, that is, that the petition for habeas corpus must be granted and petitioner immediately released.

According to the minority opinion in *Go Kim Cham vs. Valdez Tan Keh and Dizon* (supra), all the judicial processes during enemy occupation are null and void in pursuance of General McArthur's proclamation of October 25, 1944. To be consistent with this opinion, petitioner is entitled to be immediately set free, it appearing that he was imprisoned as a consequence of decisions rendered during enemy occupation.

According to the majority opinion in *Co Kim Cham vs. Valdez Tan Keh and Dizon*, there was a de facto government during enemy occupation and all acts of said de facto government are valid. Among the acts of said de facto government, according to the record in this case, was the pardon granted petitioner on February 5, 1945, by the Japanese Detachment Commander in the new Bilibid Prisons, Muntinlupa. To be consistent with the majority opinion, the validity of said pardon must be recognized. It appearing that petitioner has, after enjoying liberty under said pardon, again been imprisoned, he is entitled to be again set free. Any discussion as to the regularity of the pardon in question is useless taking into consideration that no kind of regularity can be expected from the Japanese regime, as our bitter experience under it has taught us.

We believe that consistency is one of the least things that could be demanded from this Supreme Court and its members. Consistency is essential in the administration of justice.

We vote for the immediate release of petitioner.

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