

JUAN M. CRUZ, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. No. 6497. November 03, 1910

Ponente: TRENT, J.

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TRENT, J.:

On October 14, 1910, there was presented in this court a petition on behalf of Juan M. Cruz, praying that a writ of habeas corpus issue directed to the warden of Bilibid Prison, requiring him to bring the body of the petitioner into court. The petition states that Juan M. Cruz is imprisoned and restrained of his personal liberty in Bilibid Prison in the city of Manila by the warden of said prison without authority of law. It is further alleged in the petition that the petitioner was tried, convicted, and sentenced by one of the Courts of First Instance of the city of Manila in criminal cases Nos. 1489 and 966, he being sentenced in the first case to imprisonment for a term of three years, to pay a fine of P1,000, and to the corresponding subsidiary imprisonment in case of insolvency in the payment of the fine, and in the second case to a term of two years' imprisonment and to pay a fine of \$2,000 United States currency; that this last case was appealed to the Supreme Court and affirmed, without subsidiary imprisonment in case the fine was not paid; that the petitioner having extinguished these sentences is now entitled to his liberty.

An order was issued requiring the warden of Bilibid Prison to show cause, if any existed, why the writ should not issue. On the return day thereof the said warden made return thereto in substance as follows:

That the petitioner is now undergoing in Bilibid Prison the sentences imposed upon him by the Court of First Instance of the city of Manila, one of three years' imprisonment and a fine of P1,000, with the corresponding subsidiary imprisonment in case of insolvency, for the crime of conspiracy against the Government, and the other of two years' imprisonment and a fine of P4,000, for the crime of sedition; that the imprisonment imposed in the two cases, without counting the subsidiary imprisonment, is five years; that the petitioner having commenced to serve these sentences on the 15th of November, 1905, the same will expire on the 15th of November, 1910; that for good conduct, under the provisions of Act No. 1533 (the petitioner was not allowed the full time for good conduct under this Act on account of certain violations of prison regulations), the five years' imprisonment expired on the 4th of June, 1910; that the petitioner is now serving the subsidiary imprisonment on account of his failure to pay the P1,000 fine in case No. 1489, which subsidiary imprisonment will expire about the 9th of July, 1911, at the rate of P2.50 a day.

The writ as prayed for having been issued on the 21st of October, 1910, and the hearing having been set for the 22d of the same month, the case was submitted upon the answer of the respondent to show cause.

The respondent admits that the terms of imprisonment imposed upon the petitioner, after giving him the time to which he is entitled for good conduct, expired on the 4th of June, 1910. The only question to determine is the legality of that part of the sentence of the Court of First Instance condemning the petitioner to subsidiary imprisonment in case of insolvency in the payment of the P1,000 fine. In this case the petitioner was tried and convicted for having violated the provisions of Act No. 292 of the Philippine Commission, which went into effect

on the 4th day of November, 1901. Act No.1732, which went into effect on November 1, 1907, provides that when a fine is imposed as a whole, or as any part of the punishment for any criminal offense made punishable by any Act or Acts of the Philippine Commission, the court shall also sentence the guilty person to subsidiary imprisonment until the fine is satisfied; provided, that such subsidiary imprisonment shall not, in any case, exceed one year; but in case the court imposes both a fine and imprisonment the subsidiary imprisonment shall not exceed one-third of the term of imprisonment imposed by such sentence. The penalty of three years' imprisonment and a fine of P1,000 having been imposed upon the petitioner long before this Act (No. 1732) went into effect, its provisions are not applicable to the question under consideration, as such Act, being a penal statute, can not have a retroactive effect for the reason that such effect would not be beneficial to the petitioner. (Art. 22, Penal Code; U. S. vs. Macasaet, 11 Phil. Rep., 447.) Prior to the passage of Act No. 1732, Courts of First Instance had no authority to impose subsidiary imprisonment for failure to pay fines in cases of conviction for violations of the Acts of the Philippine Commission, and such errors when committed have been corrected by this court in those cases which were appealed. (U. S. vs. Hutchinson, 5 Phil. Rep., 343; U. S. vs. Lineses, 5 Phil. Rep., 631; U. S. vs. Macasaet, supra.)

In the case at bar the Court of First Instance had jurisdiction of the offense described in the complaint for which the petitioner was tried. It had jurisdiction of the prisoner who was properly brought before it. It had jurisdiction to hear and decide upon the defenses offered by him, but it did not have power to sentence the petitioner to subsidiary imprisonment in case of insolvency in the payment of the fine imposed. It is therefore clear that that part of the judgment is void. This court at this time has no power to correct this error committed by the court below, neither has it power to remand the case to the trial court for that purpose. The fact that the petitioner did not appeal can not affect the question as the two penalties imposed are separate and distinct. The courts uniformly hold that where a sentence imposes a punishment in excess of the power of the court to impose, such sentence is void as to the excess, and some of the courts hold that the sentence is void in toto; but the weight of authority sustains the proposition that such a sentence is void only as to the excess imposed in case the parts are separable, the rule being that the petitioner is not entitled to his discharge on a writ of habeas corpus unless he has served out so much of the sentence as was valid. (Ex parte Erdmann, 88 Cal., 579; Lowrey vs. Hogue, 85 Cal., 600; Armstrong vs. People, 37 111., 459; State vs. Brannon, 34 La. Ann., 942; People vs. Liscomb, 19 Am. Rep., 211; In re Taylor, 7 S. D., 382, 45 L. R. A., 136; Ex parte Mooney, 26 W. Va., 36, 53 Am. Rep., 59; U. S. vs. Pridgeon, 153 U. S., 48; In re Graham, 138 U. S., 461.)

The petitioner has served out, according to the return of the respondent to the order to show cause, the entire part of the sentences which the court below had power to impose, and adhering to the rule that that part of the sentence imposed by the court below in excess of its jurisdiction is void, the petitioner is entitled to his release.

It is, therefore, ordered that the petitioner be discharged from custody and that the costs of these proceedings be adjudged de officio.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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