

ALFONSO MONTEBON ET AL., PETITIONERS, VS. THE DIRECTOR OF PRISONS ET AL., RESPONDENTS.*G.R. No. L-1352. April 30, 1947*

Ponente: TUASON, J.

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This is a petition for habeas corpus by Alfonso Montebon on behalf of Elpidio S. Cruz, a prisoner at the Iwahig Penal Colony. A similar petition was filed with this Court by Felicisima Santiago in the name of the same prisoner (Santiago vs. Director of Prisons, 77 Phil., 927), a petition which was denied by us in a decision promulgated on January 30, 1947. The ground of the first petition was the alleged illegality of one of the prisoner's three convictions for estafa. The present application contests the validity of the prisoner's recommitment decreed by the Commissioner of Justice of the Philippine Executive Commission under date of June 3, 1943, for the unexpired portion of his (prisoner's) maximum aggregate sentences in three cases in which he had been paroled by the Board of Indeterminate Sentence on June 26, 1941, when he still had over five years to serve. The Commissioner of Justice's recommitment order was made by virtue of Administrative Order No. 21, dated June 21, 1942, and approved by the Chairman of the Executive Commission, which read: "The Board of Indeterminate Sentence and the Board of Pardons having been abolished, the powers, duties and functions thereof shall henceforth be assumed and exercised by the Commissioner of Justice."

The petitioner does not reveal the nature of his interest in the prisoner's incarceration, or what relation, if any, he has with him. As to the effect on this case of our decision ⁴ⁿ the first application, *res judicata* as an inflexible doctrine has been held not to apply in habeas corpus proceedings. Still the court in the exercise of a sound judicial discretion, it has also been held, may give controlling weight to the prior refusal. Such discretion was used against the petitioner in *Wong Doo vs. United States* (68 Law. ed., 241), on the ground that the petitioner had had full opportunity to offer in the first case proof on the point he raised in the second. By a similar criterion and reasoning, that principle might be brought into play here. No reason whatever is shown why the petitioner did not question in the first petition the legality of the recommitment order of the Commissioner of Justice. Nevertheless, we choose not to dispose of this application on a point of procedural technicality, but will decide it on the merits.

The authority of the Commissioner of Justice under the then existing government, laws, and military, executive and administrative orders, to take over the powers, functions and duties of the Board of Indeterminate Sentence, is beyond dispute. In an international sense it matters not how the Commissioner of Justice was vested with that authority. For most purposes the government of the occupant is likely to exercise the lawmaking function through decrees or regulations emanating from a military source; and these become as effective in operation as though they were expressed in statutory enactments. As a matter of practical expediency the occupant may be disposed to utilize certain existing agencies of that government and to suspend the operation of others. (III Hyde, *International Law*, 2d ed., 1883.) This Court has held that the Philippine Executive Commission was a *de facto* government, in *Co Kim Cham vs. Valdes Tan Keh and Dizon* (75 Phil., 113).

As to whether the Indeterminate Sentence Act was in force during the occupation, the answer is in the affirmative.

A proclamation of the Commander in Chief of the Japanese forces of January 2, 1942, directed that "so far as the military administration permits, all the laws now in force in the Commonwealth, as well as executive and judicial institutions, shall continue to be effective for the time being as in the past." This was nothing more than a confirmation of the well-known rule of the Law of Nations that municipal laws, as contra-distinct from laws of political nature, are not abrogated by a change of sovereignty. (*Co Kim Cham vs. Valdez Tan Keh and Dizon*, supra.) The Indeterminate Sentence Law is not a political law. It does not affect political relations. In fact, it is a part of the Commonwealth's criminal and penal system directly related to the punishment of crime and the maintenance of public peace and order, which Article 43 of Section III of the Hague Regulations of 1907 compels the belligerent occupant to take all steps in his power to reestablish and insure as far as possible.

But the petitioner takes the position that the recommitment of which he complains was not such an act of the belligerent occupant as should be accorded respect and recognition by the Commonwealth Government, now Republic of the Philippines, after the cessation of the enemy occupation. We have only to refer to the *Co Kim Cham* case for a precedent that refutes this contention. In that case it was said, "It is a legal truism in political and international law that all acts and proceedings of the legislative, executive and judicial departments of a de facto government are good and valid." We held that in consonance with the theory of *jus postliminii* in international law, such acts and proceedings remained good and valid after the liberation or re-occupation of the Philippines by the American and Filipino forces. The decision cited Hall's work on International Law, 7th ed., p. 518, according to which the fact that the territory which has been occupied by an enemy comes again into the power of its legitimate government or sovereignty, does not, except in a very few cases, wipe out the effects of acts done by the invader, which for one reason or another it is within his competence to do.

Enforcement of the criminal law by the forces of occupation is not only valid and binding; it is imposed on them as a high obligation by the Hague Convention, as we have pointed out. The reason underlying this requirement is thus stated in *Williams vs. Bruffy* (96 U. S., 176, 192), cited in *Co Kim Cham vs. Valdez Tan Keh and Dizon*, supra:

"The existence of a state of insurrection and war did not loosen the bonds of society, or do away with civil government or the regular administration of the laws. Order was to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, marriages celebrated, estates settled, and the transfer and descent of property regulated, precisely as in the time of peace. No one, that we are aware of, seriously questions the validity of judicial or legislative acts in the insurrectionary states touching these and kindred subjects, where they were not hostile in their purpose or mode of enforcement to the authority of the national government, and did not impair the rights of citizens under the Constitution.' The same doctrine has been asserted in numerous other cases."

The petition is denied without costs.

Paras, Pablo, Bengzon, and Padilla, JJ., concur.

DISSENTING

PERFECTO, J.:

The decision on this case hinges on the question raised by petitioner as to the validity of the recommitment of prisoner Elpidio S. Cruz, as decreed by the Commissioner of Justice of the Philippine Executive Commission on June 3, 1943, to serve the unexpired portion of the maximum aggregate sentences in three cases in which said prisoner had been paroled by the Board of Indeterminate Sentence on June 26, 1941.

The Board of Indeterminate Sentence was abolished by virtue of Administrative Order No. 21, issued on June 21, 1942, with the approval of the Chairman of the Philippine Executive Commission under the Japanese regime. Under said administrative order, the powers, duties and functions of the Board of Indeterminate Sentence and the Board of Pardons had been transferred to the Commissioner of Justice of said Executive Commission.

The majority decided to uphold the validity of Administrative Order No. 21, dated June 21, 1942, and of the order of recommitment issued by the Commissioner of Justice on June 3, 1943, on the strength of the majority decision in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113).

For the reasons alleged in our dissenting opinions in said case of *Co Kim Cham vs. Valdez Tan Keh and Dizon*, and others where the same questions had been raised, we are constrained to dissent. We are of opinion that both Administrative Order No. 21 and the order of the Commissioner of Justice on June 3, 1943, are null and void under a proclamation of General MacArthur, and under the provisions of our Constitution. As we have explained in our concurring opinion in *Laurel vs. Misa* (77 Phil., 856), no governmental act shall be recognized as valid unless made under the authority of our people, on whom, according to our fundamental law, sovereignty resides exclusively. The acts of the Philippine Executive Commission and of the Commissioner of Justice during enemy occupation having been made under the exclusive authority of the Japanese Imperial Government should not be given any validity.

For all the foregoing, we vote for the immediate release of prisoner Elpidio S. Cruz.

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