

EDUARDO HILVANO, PETITIONER, VS. FIDEL FERNANDEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF SAMAR, RESPONDENT.*G.R. No. L-7904. April 14, 1955*

Ponente: REYES, J.B.L., J.

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Petitioner Eduardo Hilvano was accused of the crime of malversation of public funds in criminal case No. 2585 of the Court of First Instance of Samar. Upon arraignment, he entered a plea of not guilty to the information, but prayed for a continuance, which was granted. At the hearing of January 16, 1953, however, he petitioned the court to allow him to withdraw his plea of not guilty and to substitute it with one of guilty. His petition was granted, and on the same day, judgment was rendered sentencing him to suffer an indeterminate penalty of from 8 years to 10 years and 8 months of prision mayor, with perpetual disqualification, to pay a fine of P12,000, to indemnify the government in the sum of P12,644.50, and to pay the costs. The petitioner, who was out on bail, requested through the Department of Justice, that he be allowed to serve sentence in Muntinlupa prison, waiving the reading of the sentence in Samar; and accordingly, the sentence was read to him in the New Bilibid Prisons in Muntinlupa, Rizal, on April 3, 1954; and on the same day, he commenced serving sentence.

On April 12, 1954, petitioner filed a motion for the reconsideration of the aforesaid judgment, upon the ground that the penalty meted out by the Court was excessive. This petition was denied and copy of the order of denial was received by petitioner on May 24, 1954. On May 27, 1954, petitioner filed notice of appeal with the Office of the Director of Prisons, together with a motion for the reduction of his personal bail bond to enable him to file an appeal bond. He swore to his notice of appeal on May 27, 1954, and submitted to the trial court on June 1, 1954. Because the trial court refused to give due course to his appeal and denied his motion for reduction of bail, petitioner filed this petition for a writ of mandamus with this Court to compel the respondent Judge to allow his appeal and to fix his appeal bond at P10,000.

It is admitted by the petitioner that the judgment of the lower Court finding him guilty of the crime charged in Criminal Case No. 2585 was promulgated on April 3, 1954, and that he commenced to serve sentence on the same day (Amended Petition, par. 3). In fact, in an affidavit attached to his petition before this Court to be allowed to litigate as pauper, he states that he is at present confined in Muntinlupa serving sentence because of the decision in question. Therefore, the judgment rendered against him had become final and nonappealable on April 3, 1954, when he commenced serving sentence (Rule 116, section 7; *Gregorio vs. Director of Prisons*, 43 Phil., 650; *People vs. Quebral*, 76 Phil., 294, 42 Off. Gaz., 2788; *People vs. Feliciano*, 89 Phil., 664); hence, the lower Court did not err in disallowing his appeal filed after it had already lost jurisdiction over the case.

Petitioner contends that he was committed to prison on April 3, 1954, not for the purpose of commencing service of sentence, but on account of his inability to procure bond for his provisional release; and that his commitment not having been accompanied by his assent or conformity to the judgment, said judgment did not become final on said date. There is no merit in this contention. As we have already pointed out, petitioner admits in his petition that he was committed to the New Bilibid prisons on April 3, 1954 "to serve the sentence"; and it appears from the

order of the Court below of March 19, 1954 (Annex 3, Memorandum for Respondents) that petitioner was not only out on bail before his commitment, but that he had even requested the Secretary of Justice to ask the trial Court to authorize the Director of Prisons in Muntinlupa to read sentence to him, because he desired to enter jail without appearing in the Court of First Instance of Samar for the promulgation of the judgment against him.

Considering that petitioner himself expressed his desire to serve sentence meted upon him, and that such desire necessarily imports knowledge of and willingness to abide by the penalty meted by the trial Court, the judgment against petitioner became final and executory on April 3, 1954 when he started serving sentence thereon. Therefore, it becomes unnecessary for us to determine whether or not his notice of appeal was filed within fifteen days from promulgation of the judgment.

The petition for mandamus is denied. Without costs.

Pablo, Acting C. J., Bengzon, Montemayor, Bautista Angelo, and Concepcion, JJ., concur.

Petition denied.

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