

IN THE MATTER OF THE PETITION FOR A WRIT OF HABEAS CORPUS. ANDRES M. CULANAG, PETITIONER-APPELLANT, VS. DIRECTOR OF PRISONS, RESPONDENT-APPELLEE.

G.R. No. L-27206. August 26, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This is an appeal in a petition for habeas corpus filed by Andres Culanag, who is serving sentence in our national penitentiary, praying that the Solicitor General be denied any further extension of time to file his brief thereby showing his earnest desire that his appeal be given the necessary priority in the disposal of cases pending in this Court. The Solicitor General having filed his brief late, We proceed to consider the merits of the case on the basis of the records and appellant's brief.

Andres Culanag was accused on November 6, 1961 of falsification of public document in an information filed in the Court of First Instance of Lanao del Norte (Crim. Case No. 671). Alleged therein was that on or about June 19, 1960, in Iligan City, he subscribed and swore to a petition for commission as notary public for and in the City and Province of Cotabato, falsely claiming to be one Ross V. Pangilinan, to be a graduate of the College of Law of the University of the Visayas, to have passed the bar examinations and to have been admitted to the practice of law.

After trial, he was found on December 16, 1961 guilty as charged and sentenced to an indeterminate penalty of from four (4) months and one (1) day of arresto mayor to two (2) years, four (4) months and one (1) day of prision correccional, and to pay a fine of P1,000.00. Said judgment became final. The accused was committed to the New Bilibid Prison, Muntinlupa, Rizal, for service of the sentence.

On July 9, 1962, Culanag was discharged from the penitentiary on parole. Among the conditions of said re-lease were to reside at Iligan City, not to change his residence without the consent of the Board of Pardons and Parole, not to commit any crime, and that should he violate any of the conditions, the remaining unexpired portion of the maximum sentence imposed on him would again be in full force and effect.

Subsequently, on March 31, 1964, another information for falsification of a public document was filed against him in the Municipal Court of Mamburao, provincial capital of Mindoro Occidental (Crim. Case No. 790). Alleged this time was that on June 1, 1963, he claimed to be one Ross V. Pangilinan and filed with the Clerk of Court of the Court of First Instance of Occidental Mindoro a sworn petition for commission as notary public for and in the Province of Occidental Mindoro, falsely stating that he is a law graduate of the University of Visayas, had passed the bar examinations and been admitted to the practice of law.

Aside from this, an information was filed against him in the same court on April 3, 1964, for the offense of violation of conditional pardon under Article 159 of the Revised Penal Code (Crim. Case No. 789).

Furthermore, on May 18, 1964, for violation of the condition of his parole, Culanag was ordered arrested by the

Board of Pardons and Parole and delivered to the custody of the Director of Prisons in Muntinlupa, Rizal, to serve the remaining portion of his prison term imposed in Crim. Case No. 671 of the Court of First Instance of La-ao del Norte.

After unsuccessfully moving to quash in Crim. Cases Nos. 789 and 790, pleading double jeopardy by contending that the falsification act charged anew is the same as that involved in Crim. Case No. 671, Culanag pleaded guilty on December 4, 1964 in said new criminal cases. And he was sentenced in Crim. Case No. 790, for falsification of public document, to an indeterminate penalty of from four (4) months and one (1) day of arresto mayor to two (2) years, four (4) months and one (1) day of prision correccional and a fine of P500.00 plus subsidiary imprisonment. As to Crim. Case No. 789, for violation of conditional pardon under Art. 159, Revised Penal Code, he was sentenced to imprisonment of four (4) months of arresto mayor.

Andres Culanag started to serve these new prison sentences. On December 22, 1964, he filed a petition for habeas corpus in the Court of First Instance of Rizal (Sp. Proc. No. 5900). Petitioner's contention therein was that the second falsification case (Crim. Case No. 790) involved the same act of falsification as the first one (Crim. Case No. 671), so that double jeopardy was attendant. Said contention was rejected by the Court of First Instance. And this Court, on appeal, affirmed the lower court, finding that the falsifications involved were two different acts done at different times and in different places (*Andres Culanag v. Director of Prisons*, L-25619, June 21, 1966).

Alleging that the prison sentences under Crim. Cases 789 and 790 have already been fully served by him, Culanag filed on December 13, 1966 another petition for habeas corpus, in forma pauperis, in the Court of First Instance of Rizal (Sp. Proc. No. 2004-P). Raised as issue was whether petitioner has still to serve, in addition to the sentences in Crim. Cases 789 and 790, the remaining unexpired portion of his sentence in Crim. Case No. 671; if so, he is not yet entitled to release;* otherwise, he is.

The Court of First Instance of Rizal dismissed the petition for lack of merit. Petitioner appealed.

Appellant's stand is that a person released on parole cannot be re-arrested and made to serve the remaining unexpired portion of his sentence under Sec. 64 (i) of the Revised Administrative Code, if the State prosecutes and has him convicted for violation of conditional pardon under Art. 159, Revised Penal Code. And since he has been convicted and has served sentence for violation of conditional pardon under Art. 159 (Crim. Case No. 789), Revised Penal Code, he now argues that he can no longer be made to serve the rest of his sentence in Crim. Case No. 671, from which he was paroled.

The power of the Chief Executive under Section 64 (i) of the Rev. Administrative Code to arrest and re-incarcerate any person who violates his parole condition, stands even in the face of prosecution, conviction and service of sentence for violation of conditional pardon under Art. 159, Rev. Penal Code (*Sales v. Director of Prisons*, 87 Phil. 492). There is no double jeopardy, because the sentences refer to different offenses; in this case, to falsification (Crim. Case 671) and to violation of conditional pardon (Crim. Case 789). Nor is there deprivation of liberty without due process of law because in both cases he was found guilty and sentenced, after due process of law. And before full service of said sentences, he is not yet entitled to liberty (*People v. Tan*, L-21805, Feb. 25, 1967).

WHEREFORE, the order appealed from, dismissing the petition for habeas corpus for lack of merit, is affirmed. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

* Appellant states that remaining portion of term unserved would extend up to May 29, 1969 (Brief for Appellant, p. 2).

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