

PONCIANO WAGAN, PETITIONER, VS. THE HONORABLE JOEL P. TIANGCO, JUDGE, CIRCUIT CRIMINAL COURT, BATANGAS CITY, AND IRINEO V. MENDOZA, ACTING DISTRICT STATE PROSECUTOR, BATANGAS CI...

G.R. No. L-37561. August 09, 1976

Ponente: FERNANDO, Acting C.J.

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FERNANDO, Acting C.J.:

The decisive issue in this mandamus proceeding is the legal significance attached to an accused, now petitioner, having started to serve his sentence on the continuing effort of counsel to have his appeal allowed. An element of complexity was added to the matter due to the fact that on the very day the decision was rendered by respondent Judge, that is, on June 28, 1973, there was a notice of appeal filed by his original counsel, Vicente Garcia.[1] It was admitted, however, that on July 3, 1973, there was a motion for the withdrawal of such appeal filed by petitioner himself without previously informing counsel. Respondent Judge granted the same on July 7, 1973.[2] That ordinarily ought to have concluded matters. It did not, for on July 13, 1973, petitioner, through his new counsel,[3] filed a motion seeking a reconsideration of the decision of June 28, 1973.[4] It failed, respondent Judge on July 23, 1973 denying it "for lack of merit and the fact that the sentence has already become final and the accused had already started serving sentence." [5] Then came a second notice of appeal on July 26, 1973 by such substituted counsel.[6] Respondent Judge, in an order of August 2, 1973, was of the view that he could not give "due course" to such appeal, not only because "the accused [withdrew] the first appeal" but also because petitioner "had already started serving his sentence in the New Bilibid Prisons, Muntinlupa, Rizal." [7] Hence this suit for mandamus.

On October 4, 1973, this Court issued the following resolution: "After deliberating on the petition filed in case G. R. No. L-37561 (Ponciano Wagan v. Hon. Joel P. Tiangco, etc.), the Court Resolved, without giving due course to the petition, to require the respondents to [comment] thereon, within ten (10) days from notice hereof, and not to move to dismiss the petition." [8] Accordingly, such comment was submitted on October 18, 1973 by respondent Judge Tiangco where he stressed the fact of petitioner Wagan having "forthwith started serving his sentence" on July 7, 1973.[9] This is its concluding portion: "That on August 2, 1973 the respondent court issued an order to the effect that the decision of the respondent court, dated June 28, 1973 having become final and executory, not only for the lapse of time counted therefrom, but also from the date the accused withdrew the first appeal and in fact petitioner Wagan had already started serving his sentence in the New Bilibid Prisons, Muntinlupa, Rizal, the respondent court has no more jurisdiction whatsoever to give due course to the second notice of appeal dated July 26, 1973; * * *." [10] Mandamus, in his view, would not therefore lie. Thus: "All told, there is no ministerial duty unlawfully neglected by the respondent court to be performed which the law specifically enjoins as a duty resulting from its office." [11]

The comment was considered as an answer, and the parties were required to submit their respective memoranda. As noted at the outset, the crucial fact is that the accused in this case commenced the service of his sentence on

July 7, 1973. That, as will now be made clear, is an insuperable obstacle. This petition must be dismissed.

1. The Rules of Court speak categorically: "A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal." [12] There is no ambiguity. The words are clear. They cannot be susceptible then to any misinterpretation. What is more, there is a case squarely in point, *Hilvano v. Fernandez*, [13] a 1955 decision. The facts as set forth in the opinion of the Court, penned by Justice J. B. L. Reyes, follow: "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. * * * 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." [14] Why this mandamus petition lacked merit was clearly explained thus: "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. * * * 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 * * * hence, the lower Court did not err in disallowing his appeal filed after it had already lost jurisdiction over the case." [15] The leading case relied upon in the opinion is *Gregorio v. Director of Prisons*. [16] To paraphrase Justice Malcolm, the ponente in *Gregorio*, as a general rule, where the defendants executed or entered upon the execution of a valid sentence, the stage of finality had been reached. [17] Only recently, in *Bustamante v. Maceren*, [18] it was the formulation of Justice Malcolm that was deemed impressed with significance and called for application. [19] That basic principle once again is controlling.

2. In the light of the constant and uninterrupted holding of this Court, counsel de officio, Fernando Ma. Alberto, [20] had no choice but to accept the inevitable. As pointed out by him in his latest pleading of July 23, 1976, the appeal had been rendered moot and academic. The petition then is infected with a fatal infirmity. The words of Justice J.B.L. Reyes in *Hilvano v. Fernandez* ought to have cautioned previous counsel against the filing of this suit. Thus: "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." [21] It is understandable likewise why petitioner here, who was given a minimum sentence of six years and one day of prision mayor after he had been found guilty of homicide, chose not to pursue an appeal. Counsel de officio, however, expressed disapproval for the failure of respondent Judge to notify the original

counsel about the motion for withdrawal. That is a minor matter. It is of no legal consequence as far as the merit of the petition is concerned. At any rate, the counsel who signed on behalf of Alejandro A. Fider and Associates could have refrained from instituting this mandamus proceeding, for according to its very annexes,[22] the accused admittedly had started serving sentence. A little more care on his part ought to have warned him against the precipitate step of elevating the matter to this Tribunal. He ought to have known that such a move was bereft of support in law.

WHEREFORE , the petition for mandamus is dismissed for lack of merit. No costs.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Petition, pars. 2-3.

[2] Ibid, par. 3.

[3] Alejandro A. Fider and Associates, acting through Amado B. Crescini, Jr.

[4] Ibid, par. 4.

[5] Ibid , Annex B.

[6] Ibid, par. 5.

[7] Ibid, Annex D, Order of August 2, 1973.

[8] Resolution of this Court dated October 4, 1973.

[9] Comment of Respondent Tiangco, 2.

[10] Ibid, 7-8.

[11] Ibid, 8.

[12] Rule 120, Section 7 of the Rules of Court reads in full: "A judgment of conviction may be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal."

[13] 96 Phil. 791.

[14] Ibid, 791-792.

[15] Ibid, 792-793.

[16] 43 Phil. 650 (1922). These are the other cases cited in the opinion of Justice J.B.L. Reyes; *People v. Quebral*, 76 Phil. 294 (1946); *People v. Rodillas*, 89 Phil. 99 (1951); *People v. Feliciano*, 89 Phil. 664 (1951).

[17] Ibid, 652.

[18] L-35101, November 24, 1972, 48 SCRA 155.

[19] Ibid, 163. Justice Malcolm did cite *United States v. Hart*, 24 Phil. 578 (1913) and *United States v. Vayson*, 27 Phil. 447 (1914). Cf. *Alvarado v. Director of Prisons*, 87 Phil. 157 (1950); *People v. Paet*, 100 Phil. 357 (1956); *People v. Sanchez*, 101 Phil. 745 (1957); *People v. Mamatik*, 105 Phil. 479 (1959); *De Leon v. Rodriguez*, 107 Phil. 759 (1960).

[20] His designation as such was necessitated by the appointment of the principal member of the Fider Law Firm, now Judge Alejandro A. Fider, to the bench.

[21] 96 Phil. 791, 793.

[22] Annexes B and D.

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