

FIDEL B. FORTUNO, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.*G.R No. L-1782. February 02, 1948*

Ponente: PARAS, J.

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This is a petition for the writ of habeas corpus in which the petitioner, a prisoner whose aggregate penalty is more than twenty years of imprisonment counted from October 8, 1941, seeks his immediate release.

The first ground is that the recommitment order issued by the Board of Indeterminate Sentence of October 4, 1941, directing the confinement of the petitioner for the unexpired portion of his maximum sentence in case No. 9587 of the Court of First Instance of Rizal (2 years, 4 months and 22 days), was illegal and otherwise premature, because (1) petitioner's one-day trip to Santa Rosa, Laguna, merely to set money from his relatives, did not constitute a violation of the condition of his parole that he was to live in Manila and not to change his residence during the period of his parole without the prior permission of the Board, and (2) the mere filing against the petitioner of several complaints for estafa, without final judgment of conviction, did not constitute a violation of another condition of his parole that he was not to commit any crime and was to conduct himself in an orderly manner. Petitioner's position is untenable. Without deciding whether or not his visit to Santa Rosa without first securing the consent of the Board was a violation of one of the conditions of his parole, it may safely be held that he broke the other condition, namely, that he would not commit any crime, since the petitioner was prosecuted for and finally convicted of the series of estafa committed by him during the period of his parole. Petitioner's contention that the recommitment order was premature, because it came down before his convictions, is now rather academic, even assuming that final conviction is necessary in order to constitute a violation of the condition in dispute.

The second ground is that the additional penalty of 10 years of imprisonment imposed upon the petitioner in CA-G. R. No. 79, was illegal and in excess of the jurisdiction of the court, because his conviction for illegal possession of counterfeit bills should not be counted for habitual delinquency purposes, since said conviction is not for robbery, theft, estafa or falsification. In other words, petitioner's contention is that his previous conviction for illegal possession of counterfeit bills was wrongly included. Such mistake, even if true, cannot be corrected in a proceeding for habeas corpus, for there is virtually no difference between the alleged error and that pointed out in *Pagantalan vs. Director of Prisons*, 57 Phil. 140, wherein it was held that the error of counting as separate convictions various convictions which should be counted as one due to the proximity of the commission of the crimes, should "have been corrected by appeal, for it was rather an error of judgment and not an undue exercise of judicial power which vitiates and nullifies the proceeding."

Petitioner also argues that the information in CA-G. R. No. 79 did not contain any allegation that he was an habitual delinquent, though it was alleged therein that he was a recidivist. Apart from the absence of proof on the point, and from the legal presumptions that the court acted lawfully in the exercise of its jurisdiction and performed its duty regularly (section 69, pars. m and n, Rule 123), the alleged defect may be likened to that

referred to in *Domingo y Reyes vs. Director of Prisons*, 44 Off. Gaz., 2201, wherein we said that "the allegation, if true, that the judgment of conviction was rendered without a plea of guilty properly entered by the accused to the lesser offense of homicide, is merely a defect of procedure, not of jurisdiction, though, it may have the effect of voiding the judgment," and "cannot be reviewed in habeas corpus proceedings wherein the only issue is whether or not the petitioner is entitled to release."

The third ground is that the petitioner is entitled to a special allowance of one-fifth of his aggregate penalty on account of his failure to escape from his place of confinement during the war. Our ruling on this feature of the case has to be adverse to the petitioner, inasmuch as we have already held that "the special allowance for loyalty authorized by articles 98 and 158 of the Revised Penal Code refers to those convicts who, having evaded service of their sentences by leaving the penal institution, give themselves up within two days," and not to those who have not escaped. (*Artigas Losada vs. Acenas*, 44 Off. Gaz., 2694)

It appearing that the petitioner has not yet served his total term of imprisonment, as the periods sought by him to be deducted are not allowable, the petition will be, as the same is hereby, denied without costs. So ordered.

Moran, C.J., Pablo, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

DISSENTING OPINION

PERFECTO, J.:

Petitioner complains that the recommitment order issued on October 4, 1941, by the Board of Indeterminate Sentence, for the unexpired portion of petitioner's sentence in case No. 9587 of the Court of First Instance of Rizal, was illegal and premature, upon two grounds: 1. That his one-day trip to Santa Rosa, Laguna, merely to get money from his relatives, did not constitute a violation of the condition of his parole that he was to live in Manila and not to change his residence during the period of his parole without the prior permission of the board, and 2. That the mere filing against petitioner of several criminal complaints, without final judgment of conviction did not constitute a violation of the condition that he was not to commit any crime and was to conduct himself in an orderly manner.

Petitioner's position is well taken. By making the trip to Santa Rosa, petitioner did not cease to live in Manila and did not change his residence. Residence in one place is not incompatible with visits to other places for purposes other than to establish therein another residence. The condition not to commit any crime and to conduct himself in an orderly manner is not violated by the mere fact that several criminal complaints have been filed. Before final judgment of conviction, the accused cannot be considered as having been guilty of any crime. He is protected by the constitutional presumption of innocence until the contrary is proved, and the proof is the final sentence of conviction, (Section 1(17), Art. III of the Constitution.)

Petitioner attacks the legality of the additional penalty of 10 years of Imprisonment imposed upon him in CA-G. R. No. 79, because his conviction for illegal possession of counterfeit bills should not be counted for habitual delinquency purposes, since said conviction is not for robbery, theft, estafa or falsification. The complaint is well founded. Illegal possession of counterfeit bills cannot be classified as robbery, theft, estafa or falsification. Petitioner is entitled to relief. We disagree with the majority's position that the error cannot be corrected in a proceeding for habeas corpus. It is not a case of a simple harmless mistake. It is a case of manifest illegality which this Court is duty bound to correct if true justice is to be administered. The case of *Paguntalan* (57 Phil., 140) is invoked in support of the theory that appeal is the proper remedy. The theory is unreasonable and no authority can make it reasonable. All authorities have to bow before the authority of reason. To give your back to reason is to

defeat justice.

Another ground of petitioner is that the information in CA-G.R. No. 79 did not contain any allegation that he was a,, habitual delinquent. But this contention is dismissed, by the majority upon the theory that the error or defect of procedure "though it may have the effect of voiding the judgment, cannot be reviewed in habeas corpus proceedings wherein the only issue is whether or not the petitioner is entitled to release." This position appears to us to be untenable and absurd. Of course it is elemental that the issue in habeas corpus proceedings is whether or not the detained or imprisoned person is entitled to release, but this is only the conclusion to be arrived at and it has to be based on the result of the inquiry as to whether or not the detention or imprisonment is legal or illegal. The right to be released is merely a conclusion, and should be gathered from a result of the question as to the legality or illegality of the deprivation of liberty. When this deprivation is based on a judgment, the validity of the judgment becomes an issue essential in the habeas corpus proceedings. When a prisoner is deprived of his freedom by virtue of a void judgment he is entitled to be released on habeas corpus.

In support of the majority position the decision in Domingo vs. Director of Prisons, G.R. No. L-1229 is invoked. That it is erroneous we have already shown in our opinion in said case which we quotes:

"On July 31, 1946, petitioner was charged with the crime of murder, allegedly committed on July 6, 1946.

"On August 20, 1946, the accused was arraigned. His attorney made the statement that he advised the prosecution of the fact that provocation came from the victim, and that the information ought to be amended. The information without the amendment was read, and the accused entered a plea of not guilty,

"The following is the transcript of the stenographic notes taken during the hearing on August 30, 1946:

""RESUMPTION OP THE PROCEEDINGS
on August 30, 1946, in the morning.

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""APPEARANCES:

""Assistant City Fiscal Guillermo Dacumos, for the prosecution; and, Attorney Celestino de Dios, for the defense.

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"Sr. de Dios:

"El Agosto 26 yo he presentado una carta al Fiscal diciendo que la acusaclon tenia entremanos....diciendo que con las pruebas no es de asesinato sino homicidio, y considerando la declaracion espontanea de culpabilidad y la falta de instruccion del acusado y sumision a las autoridades, con estas circunstancias el acusado se declara culpable del delito de homicidio.

"Fiscal:

"I read over this case and I have no evidence to sustain the murder charge and we are willing to agree to the plea of guilty of the accused, that is homicide,

"Court:

""With the mitigating circumstance of plea of guilty and voluntary surrender... Como se entrego?

"Sr. de Dios:

""Cuando fueron a au casa se entrego voluntarlamente.

""Court:

""SIX years and one day of prislomayor to twelve years and one day of reclusion temporal, to indemnify the offended party in the sum of TWO thousand pesos. The accused is credited with one-half of his preventive

Imprisonment.

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"The foregoing is true to the best of my understanding and belief.

""(SGD.) VALENTIN C. GUTIERREZ
(Stenographer)"

"The above is a conclusive evidence that, without the petitioner pleading guilty, but only upon his attorney's statement of petitioner's willingness to plead guilty, the lower court sentenced him forthwith from six years and one day of prison mayor to twelve years and one day of reclusion temporal and to indemnify the offended party in the sum of f-2,000.00, crediting the accused with one-half of his preventive imprisonment.

"Section 3 of Rule 114 provides: 'A plea of guilty can be put in only by the defendant himself in open court.'

"speaking of Identical provision in Section 25 of General Orders No. 58, this Court stated that 'stronger and clearer language could not have been used.' 'ONLY,' as thus used, is clearly restrictive and excludes as clearly as language can, the idea that someone else can enter the plea of guilty for an accused person charged of felony. 'ONLY,' coupled with the words 'the defendant himself,' has the effect of absolutely prohibiting any other person from entering such a plea. 'If a plea of guilty be entered into by another person, where the charge is that of a felony although such person may be the counsel for the accused, it is a nullity and no conviction can rest thereon' (U.S. vs. Jimenez, 34 Phil, 74). »A plea of his attorney for him 13 a nullity' (McWillars vs. State, 98 Am. Dec. 791). And from the book of one of the authors of the Rules of Court we quote:

"Under section 3, a plea of guilty can be put in only by the defendant himself in open court. Such a plea entered by any other person, as counsel, is a nullity and no conviction can rest thereon.' (Comments on the Rules of court, Moran, Volume II, page 521.)

"If conviction cannot rest on any other plea of guilty but only the one entered personally by the defendant himself, the judgment convicting him becomes illegal and a nullity. A person committed to Imprisonment under such a

judgment may be released on habeas corpus (29 C.J. 17; Andres vs. Wolfe, 5 Ill. 60; Ex parte Lange, 21 U.S. [L.Ed.] 872; State vs. Bailey, 106 Minn. 138; Collins vs. Johnston, 237 U.S. 502).

"The violation of the law in petitioner's case is justified by the following statement in the majority opinion:

'The allegation, if true, that the judgment of conviction was rendered without a plea of guilty properly entered by the accused to the lesser offense of homicide, is merely a defect of procedure, not of jurisdiction, though it may have the effect of voiding the judgment. And this error of procedure cannot be reviewed in habeas corpus proceedings wherein the only issue is whether or not the petitioner is entitled to release. And the petitioner is not entitled to release even if we have power to set aside the judgment upon the ground aforementioned, for, in such event the proper procedure would be to reopen the criminal case and order the trial court to proceed further as if no judgment has ever been entered therein, that is, it must arraign the accused for the lesser offense of homicide after the information is duly amended, then try the case if the accused pleads not guilty, and the latter in the meantime should remain in confinement if he is not on bail.'

"Defect of procedure are words that express a very wide range of ideas, which include the most insubstantial and harmless and those which encroach into the fundamental rights of an accused. Generalities are often resorted to for the purpose of avoiding hard or disagreeable problems. Excess of jurisdiction is also a defect of procedure, and the majority in stating both ideas, the one contradicting the other, are laboring under the wrong premise of eliminating a particular idea from the general which comprises it. From a wrong premise we cannot expect a correct conclusion.

"Of course, the issue in this case is whether petitioner is entitled to be released or not, a question which necessarily involves the question whether he is illegally deprived of his liberty. As we have shown, the judgment convicting petitioner, by virtue of which he is confined in prison, is a nullity. The majority makes the lukewarm admission that the fact that petitioner did not personally enter a plea of guilty 'may have the effect of voiding the judgment.' This dubitative and nubbous statement is not clarified in any part of the majority opinion. If the judgment under the authority of which petitioner is deprived of his liberty, is null and void, then his confinement should be declared illegal for lack of a legal basis to support it.

"The majority evade facing the full consequences of the illegality of the confinement by resorting to a technicality. Without good grounds or any ground at all in support of their position, they opine that habeas corpus is not the proper procedure but a reopening of the criminal case in which the illegal and void judgment has been rendered. The position has the evident purpose of depriving petitioner of a legal remedy to the illegality of which he is a victim, by denying him the remedy of habeas corpus, to which recourse he has resorted on time, and offering him instead a remedy the time for whose usefulness had already elapsed, that is the remedy of an appeal months after it could be resorted to. It is true that certiorari proceedings is also suggested. But if there is a substantial meaning in their suggestion, we do not see any reason why the present petition for habeas corpus

cannot be considered also as an action for certiorari, although, if necessary, it be amended to follow the majority's suggestion that the trial court be made a respondent.

"Petitioner's allegation that he did not enter a plea of guilty is disbelieved by the majority because the trial judge states in his judgment that the accused 'pleaded guilty to the crime of homicide and the deputy clerk of court signed an affidavit that she re-arraigned the accused for the lesser offense on August 30, 1946, and that the accused pleaded guilty.'

"The two evidences pointed out by the majority appear without firm ground to stand on. The trial court's sentence appears to contain an unquestionable misstatement of fact. The sentence is dated 'August 31, 1946.' It narrates the proceedings under which the accused is alleged to have pleaded guilty to the crime of homicide as having taken place 'this morning.¹ But the affidavit of the deputy clerk of court states that the re-arraignment and plea of guilty entered by the accused took place On 'August 30, 1946.' The contradiction between the statement of the trial court and that of the deputy clerk of court has not been explained, and there is no way of knowing which should be accepted as the correct narration of the facts. 'The trial judge states that the plea of guilty was entered in the 'morning' of August 31, 1946, while the deputy clerk of court states that it took place on August 30, 1946. The majority appear to accept both as correct. We prefer to accept the transcript or the stenographic notes as the better and logical one, because there it appears that, although the accused was present in court on August 30, 1946, he was not then arraigned nor did he enter a plea of guilty. With respect to the affidavit of the deputy clerk of court, it is surprising that such affidavit has been presented, while the original notes which she must have taken during the proceedings and the minutes of the session she must have entered and kept, were not offered in evidence.

"That the accused, instead of appealing against the sentence, filed the petition three-and-a-half months after notice of his conviction, is no evidence at all that he pleaded guilty. The majority assert that 'this passive attitude is an indication of conformity with the proceedings,' but such conformity does not establish the fact that he pleaded guilty when he did not, and it is elemental that such conformity does not make legal an illegal judicial actuation. Such alleged conformity, at most, may be construed as petitioner, a 20-year-old-youngster, took for granted as well done the illegal proceedings in which his own attorney and the trial judge, both trained and experienced in law, took part as the principal actors, inducing petitioner to believe that they were acting in conformity with the law.

"The majority tried to weaken the force of the transcript of the stenographic notes by stating that 'the stenographer may take note of the plea of guilty entered by an accused, but he is not bound to do so, that proceeding being a proper subject matter for the minutes to be entered by the clerk of court.' But as we have already asserted, no minutes entered by the deputy clerk of court was offered as evidence in this case. Besides, it is a legal heresy to assert that the stenographer 'is not bound to take note of the plea of guilty entered by an accused. The court stenographer is duty bound to take note of all the proceedings of the court sessions attended by him. Precisely, because formerly some judges used to order the court stenographer not to take note of some proceedings, there is a law which guarantees the litigants and their attorneys the right to have inserted in the record and be noted by the court stenographer all actuations and proceedings in their cases in a court session. And there is no proceeding more important in a criminal case than the arraignment of the accused and his entering a plea of guilty or not

guilty. There is absolutely no valid reason why a court stenographer should be relieved from the duty of noting down the plea entered by an accused at his arraignment. We refuse to countenance such an absurdity.

"We vote to order the release of petitioner, it appearing that he is illegally confined by virtue and under the authority of a judgment which is null and void ab initio."

The last question propounded by petitioner is that he is entitled to the allowance of one-fifth of his aggregate penalty because he did not escape from his place of confinement during the war. The contention is also rejected by the majority who invoke the decision in *Lozada vs. Acenas*, L-810-813. Our disagreement with said decision is explained in the opinion which we quote:

"The legal controversy in this case centers upon the interpretation and application of Articles 98 and 158 of the Revised Penal Code. We are inclined to follow the liberal interpretation adopted by the lower court and, therefore, to affirm its judgment, dated July 20, 1946, ordering the release of appellees Manuel Artigas Losada, Santiago Aguda, Getulio Geocada and Francisco Danao.

"Under the two above-mentioned articles of the Revised Penal Code, a convict who shall evade the service of his sentence by leaving the penal institution where he is confined, on the occasion of disorder resulting from a conflagration, earthquake, explosion or similar catastrophe, or during a mutiny in which he has not participated, shall suffer an increase of one-fifth of the period still remaining to be served under his sentence, or a deduction of one-fifth of his sentence if, in the first case, he shall fail to give himself up to the authorities or, in the second case, he gives himself up to the authorities within forty-eight hours following the issuance of a proclamation announcing the passing away of the calamity or catastrophe.

"There is no question that war is a calamity or catastrophe similar to those specifically mentioned by law. It is a fact that appellees behaved well during the last war and remained loyal to the prison authorities in spite of the disorder occasioned by the war. As they did not escape, their cases apparently do not fall within the letter of Articles 98 and 158 of the Revised Penal Code. But the spirit embodied in said articles offers no doubt that appellees' case³ fall within the substantial purview of the law.

"Under the provisions of Article 98 and 158 of the Revised Penal Code, the convict who shall evade the service of his sentence and does not give himself up to the authorities within forty-eight hours following the issuance of a proclamation announcing the passing away of the calamity, shall be punished with an increase in his sentence, but if he gives himself up he will be granted, as a reward, a reduction of his sentence, a reduction that in appellees' cases will entitle them to freedom. "Appellant and the majority of this Court, instead of following the clear intention of the law, would sacrifice it for the sake of an application *ad pedem litere*. Such attitude will lead us to absurd conclusions.

"For example, the articles in question contemplate the issuance of a proclamation by the Chief Executive announcing the passing away of the calamity. In the hypothesis that such a proclamation is never issued, a convict who shall have evaded service of sentence under the circumstances contemplated by the law but later gives himself up to the authorities, will not be entitled to one-fifth deduction. In another hypothesis, a convict who, on the occasion of disorder resulting from a calamity or catastrophe, had opportunity to evade the service of his sentence, instead of escaping, voluntarily continues to submit himself under the custody of authorities who might not have the force to make effective said custody, will be in a worse situation than the one who evaded his sentence. The absurd consequences of the narrow-minded interpretation that sticks to the letter of the law, instead of following the clear intention of the lawmaker, compels us to reject it.

"The liberal interpretation adopted by the lower court is in consonance with the modern trend of the law. That interpretation is in accordance with the spirit which should pervade all criminal laws, that is, that any doubt or controversy should be resolved in a way that will be more beneficial to the accused.

"For all the foregoing, we vote to affirm the appealed decision."

For all the foregoing, we vote to grant the petition.

DISSENTING OPINION

HILADO, J.:

I dissent. Consistently with my stand on the question of validity or nullity of judgments and proceedings of the occupation courts, I am of opinion that petitioners confinement is illegal with respect to the orders mentioned in paragraphs 2 to 11, both inclusive, of the return. As to the order of the Parole Board of October 4, 1941, referred to in paragraph 1 of said return, Act 4103, Section 8, as amended by Act 4225, Section 3, provides that in case of violation by a parolee of any of the conditions of his parole, the Board of Indeterminate Sentence may issue an order for his re-arrest, in which case the prisoner so re-arrested shall serve the remaining unexpired portion of the maximum sentence for which he was originally committed to prison, with the exception therein established but which does not hold in this case. Petitioner was ordered re-arrested and reconfined by the Board of Indeterminate Sentence through its order Exhibit 1, dated October 4, 1941, signed by the Secretary of Justice, as Chairman of the Board.. As stated in the majority opinion, the unexpired portion of petitioner's sentence was 2 years, 4 months and 22 days. Judging from the very first allegations of the return, petitioner must have been recommitted under that order on October 8, 1941. Therefore, the unexpired portion of his sentence above referred to terminated on March 1, 1944. From then on, in my opinion, petitioner's confinement became illegal, and he should therefore forthwith be released.

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