

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. MARIANO CASTAÑEDA, JUDGE OF THE COURT OF FIRST INSTANCE OF PAMPANGA (BR. III), AND GERONIMO KABIGTING, RESPONDENTS.

G.R. No. L-47131. July 03, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

These appellate proceedings concern the president of a religious organization (a parish council) who, over several years, admittedly solicited and received funds for the construction of the parish church in his neighborhood, without first securing a permit to do so from the Director of Public Welfare (now Director of Field Services, Department of Social Welfare) as required by Act No. 4075.[1] That act declares any violation of its provisions to be punishable "by imprisonment for not more than six months or by a fine of not more than two hundred pesos (P200.00) in the discretion of the court." [2] And offenses so punished prescribe in four (4) years.[3]

It is admitted that the respondent, Geronimo Kabigting, as president of the Parish Council of Sto. Tomas, Pampanga, had been soliciting and collecting contributions for the period from July 4, 1971 to April, 1973 for the construction of the Sto. Tomas Parish church; and that as of April 11, 1973, he had received donations from different persons and companies amounting to P10,363.80; and that neither he nor the Sto. Tomas Parish Council had secured any permit to so solicit and collect contributions in accordance with Act No. 4075.

Upon these facts, Kabigting was charged with a violation of said Act No. 4075 in the Municipal Court of Sto. Tomas on August 23, 1976. The case was docketed as Criminal Case No. 796. Kabigting moved to dismiss the complaint on the ground that the crime charged had already prescribed, considering that since July 4, 1971 -- when he began soliciting contributions -- to August 23, 1976 -- when the complaint was presented -- more than four (4) years had elapsed.[4] His motion was denied by the Municipal Court as was also, his motion for reconsideration of the order of denial.[5]

Kabigting went to the Court of First Instance of Pampanga and prayed for the issuance of the writ of certiorari to annul the adverse orders of the Municipal Court of Sto. Tomas.[6] After due proceedings, that Court rendered a decision on September 27, 1977, granting the writ as prayed for and directing the dismissal by the Municipal Court of Criminal Case No. 796 against Kabigting on the ground that the offense charged had already prescribed.[7] It is this decision which the People has appealed to this Court, principally upon the legal issue of whether or not, under the undisputed facts, the offense imputed to Kabigting is indeed time-barred.

It is the People's contention that every act of solicitation of donations without the permit required by Act No. 4075 constitutes a complete and separate offense; that therefore, solicitations made within four (4) years prior to the filing of the complaint on August 21, 1976 -- specifically the solicitations in the latter part of 1972 and in 1973, mentioned in the complaint filed against Kabigting in the Municipal Court -- could not be considered as barred by prescription. Each act of solicitation, according to the People, is a complete offense in itself and could not be deemed a product of one consolidated or single criminal resolution, for the gist of the crime is the

solicitation or collection of contributions without a permit. It argues that it is absurd to consider the many acts of solicitation without a permit as only one offense, since this would mean that future solicitations without permit would be deemed prescribed even before their commission, and Kabigting could continue indefinitely collecting contributions without permit without fear of prosecution, after the lapse of four (4) years from the first collection (July 4, 1971). And even assuming the contrary, the People submit that the prescriptive period should be reckoned only from August 18, 1976, when the lack of permit was admitted by Kabigting during the preliminary investigation, conformably with Section 2, Act 3326, as amended, providing that prescription begins to run from the day of the commission of the offense, but "if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment."

It is Kabigting's theory, on the other hand, that what the law means to punish is the failure to secure a permit prior to soliciting contributions or donations; and since the first solicitation without permit was made on July 4, 1971, the crime was extinguished by prescription four (4) years thereafter, or on July 3, 1975, slightly more than a year before the filing of the complaint against him on August 21, 1976.

Clearly, the crime is made up of two (2) essential elements: (a) soliciting or receiving contributions for charitable or public welfare purposes, (b) the omission to secure a permit to do so from the Director of Public Welfare (now Director of Field Services, Department of Social Welfare), prior to soliciting or receiving contributions. Any person intending to make such solicitations is required to first secure a permit to do so; without that permit, he commits a crime if he solicits or receives contributions; but obviously, if he makes no solicitation or receives no contributions, he commits no crime even if he obtains no permit. The permit, once obtained, authorizes a person to solicit and receive contributions for charitable or public welfare purposes, whether from one or a thousand donors; and since plainly, the motive for the obtention of such a permit is invariably, not to say always, to solicit not from one donor only, or two or three, but from as many as may be approached and importuned, it seems logical to assume that it was not the intendment of the statute to make punishable every single act of solicitation without permit as individual, separate crimes, a proposition enhanced by the fact that the infringement of the statute is treated as a mere misdemeanor or light offense, and by the familiar principle that criminal laws should be construed in favor of the accused.

Hence, solicitations or acceptance of donations for charitable or public welfare purposes over a period of time, without the requisite permit to do so, are to be deemed one offense only regardless of the number of such acts of solicitation or acceptance of contributions. In this sense, the offense is a continuing one perpetrated over a span of time. The period of its prescription shall therefore be computed from the latest act of solicitation or acceptance of contributions, and not from the first.

In an analogous case,[8] also involving breach of a special law --prohibiting the collection of attorneys' fees in respect of claims of dependents of a deceased veteran, in excess of the maximum prescribed by the law -- and substantially upon the same precepts just discussed, the several, periodical acts of a lawyer of collecting fees in excess of the statutory maximum were held to constitute one single, continuing offense, which may not be properly divided into different segments, each segment subject to prescription independently of the others.

The challenged decision is therefore incorrect in adjudging the period of prescription to have been completed in Kabigting's favor and on that basis directing the dismissal of the criminal prosecution against him.

WHEREFORE, the Decision rendered on September 27, 1977 in Criminal Case No. 5020 of the then Court of First Instance (now Regional Trial Court) of Pampanga, subject of this appeal, is REVERSED AND SET ASIDE, and the Orders of the Municipal Court (now Municipal Trial Court) of Sto. Tomas, Pampanga, in Criminal Case No. 796, dated February 1, 1977 and March 9, 1977, are REINSTATED and hereby AFFIRMED. Costs against

private respondent.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Sec. 1

[2] Sec. 3

[3] Act 3376, as amended which provides that offenses under special laws punished by imprisonment of more than one month but less than two years prescribe in four (4) years

[4] Rollo, pp. 41-43

[5] Id., pp. 49-50, 53

[6] The case was docketed as Civil Case No. 5020 and assigned to the sala (Br. III) of respondent Judge, Hon. Mariano Castaneda, Jr.

[7] Rollo, p.111

[8] Peo v. Sabbun, 10 SCRA 156 (1964)

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